H.R. 4, THE INTELLIGENCE IDENTITIES PROTECTION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LEGISLATION

OF THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

HOUSE OF REPRESENTATIVES

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TUESDAY, APRIL 7, 1981

U.S. HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
SUBCOMMITTEE ON LEGISLATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:08 p.m., in room H-405, the Capitol, Hon. Romano Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli (presiding), Fowler, Hamilton, Boland (chairman of the committee), Stump, Rose, McClory, Ashbrook, Robinson, and Young.

Also present: Thomas K. Latimer, staff director; Michael J. O'Neil, chief counsel; Jeannie McNally, clerk of the committee; and Bernard Raimo, Jr. and Ira H. Goldman, counsel; Herbert Romerstein, professional staff member; and Louise Dreuth, secretary.

Mr. MAZZOLI. The subcommittee will come to order. I have a short opening statement, then I would yield to the gentleman from Illinois and the gentleman from Massachusetts for statements.

Today the Subcommittee on Legislation begins the second set of hearings on the Intelligence Agents Identities legislation. An earlier set of hearings was held, as you know, in January of 1980.

The focus of our discussion will be H.R. 4, a bill which is identical to that which was reported favorably by both this committee and the House Committee on the Judiciary in the 96th Congress. H.R. 4 addresses the pernicious practice of deliberately and publicly disclosing the identities of undercover U.S. intelligence officers and their agents.

When we began the earlier hearings I made the following statement:

> Such disclosures have been on the increase in recent years and are coming at a time when an effective intelligence collection capability is necessary to the safety, to the security and the wellbeing of our nation as never before in its history. It goes without saying that divulging the identity of intelligence agents serves to destroy this capability. Not only are lives threatened, but legitimate intelligence collection activities are rendered useless. The careers of dedicated intelligence officers are ruined, service morale is lowered, foreign policy is disrupted, and the taxpayers' money is wasted.

Since that statement was made, the "Naming Names" section of the Covert Action Information Bulletin and the Counterspy magazine have published scores of names of alleged CIA officers.

Since that first set of hearings was held, and as a result of data developed at the hearings, changes were made in the wording of this bill, changes intended to meet certain constitutional objections which had been raised in the earlier set of hearings.

H.R. 4 now requires that before a person who did not have authorized access to the information disclosed can be convicted, the Government has to prove not only that the disclosure was made with an intent to impair or impede the foreign intelligence activities of the United States, but also that the disclosure was part of an effort to impair and impede the intelligence activities.

The purpose of these hearings, which is, again, the second set of such hearings, is to hear from proponents and opponents to H.R. 4, to supplement or complement or explain the original record in order that we may have for ourselves and for our colleagues who will vote on H.R. 4 a total and complete, balanced, up-to-date record.

The support of the majority leader who is here with us today to testify on the bill, and of the minority leader of the House, Bob Michel, of many other House leaders, is greatly encouraging to me and to those of us who have worked to protect America's intelligence field agents so they can do the essential task of protecting the Nation's security. Quick and positive action on this measure is warranted and necessary and vital. The support of these influential House leaders will help profoundly in moving H.R. 4 onto the statute books of this land.

And with that, I will yield to the gentleman from Illinois for any opening statements he may have.

Mr. McCLORY. I thank the Chairman for yielding. As a long-time advocate of legislation protecting the identities of our foreign intelligence agents, I commend you for setting H.R. 4 as the top priority item of the Subcommittee on Legislation, and for scheduling the first hearings on this legislation in the 97th Congress. Your efforts as acting chairman in the last Congress and now as chairman are clear indicators of your interest in protecting both the civil liberties and the national security interests of the American people.

Mr. Chairman, it is clearly not the intention of the proponents of H.R. 4 to muzzle those who oppose our intelligence activities. We are not seeking to stifle dissent, and this legislation would not produce such a result. Indeed, after enactment of H.R. 4, anyone could make any remark, calm or inflammatory, true or untrue, about our intelligence agencies. No matter how disruptive its effect would be, such a statement would not be prohibited, though it might well be unwise. Rather, one narrowly defined type of information, that which is not necessary to an informed public, is all that would be prohibited from disclosure. This prohibition would not cause damage to the first amendment for its proscriptions are not absolute. I have heard no compelling argument for the proposition that the first amendment would proscribe enactment by Congress of a law criminalizing the disclosure of the identities of U.S. intelligence agents operating under cover.

Mr. Chairman, we simply cannot ask our intelligence officers and those who are willing to clandestinely aid them to put their lives at risk to provide for the security of our Nation without offering them reasonable protection. Improved cover will help, to be sure, and the administration is seeking to accomplish this. This legislation will help as well, and in the absence of some compelling reasons which may be expressed in these hearings, I will be eager to see this measure enacted.

Thank you.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from Massachusetts, the chairman of our committee?

Mr. BOLAND. Thank you, Mr. Chairman.

I would just like to underscore something that you have already said. As we did during the previous Congress, the committee today seeks the advice and suggestions of the witnesses before it, and our hearings today and tomorrow will be working sessions in which the key issue before us, the constitutionality of section 501(c), will be covered as thoroughly as possible.

We hear today from the House leadership and from the Government. Tomorrow morning we will hear from certain expert witnesses from among the many interested public groups. In the afternoon we hope to hear from a panel of distinguished legal and constitutional scholars. Our aim throughout will be to test and re-examine the provisions of H.R. 4.

This committee clearly wants to provide effective protection for our undercover intelligence operatives. We want to provide this protection in a constitutionally permissible way. So our sessions will seek to explore alternatives, to question assumptions, to play the devil's advocate. We will do these things, however, because our resolve is to report out a good bill, and to do so in the very near future.

Mr. MAZZOLI. Mr. Chairman, I thank you very much.

Would any of my colleagues have very brief statements they wish to make?

The gentleman from Virginia?

Mr. ROBINSON. I thank the chairman for yielding.

I am in complete accord with the comments that have been made with respect to this legislation. It was my pleasure and privilege to support it in the last Congress, and it is my intention to do so again. I am very pleased that your committee, Mr. Chairman, has seen fit to take it up as early in the session as this date.

Mr. MAZZOLI. Well, we certainly thank you.

The gentleman from Florida?

Mr. YOUNG. Mr. Chairman, thank you very much.

I would like to just add one other thought to those thoughts that have already been made. This legislation before us now does provide the same type of protection for persons working with and associated with the foreign intelligence activities of the Federal Bureau of Investigation as it does for the CIA. The original bill did not. I think it was lacking. I am happy to see that it is included in the bill that we consider today.

Mr. MAZZOLI. Thank you.

The gentleman from Georgia.

Mr. FOWLER. Thank you, Mr. Chairman.

I just want to say that this is not an easy area in which to legislate, and I want to commend you and the chairman of the full committee on the work that has already been done. We are trying to balance the responsibilities and protections of a free society, freedom of speech, freedom of expression in that society, with the responsibility to punish those who would damage our country by revealing the names of undercover agents who are serving our country.

As I say, it is difficult, but I think it can be done, and I think this legislation and these hearings will show that those equities can be balanced and we can provide the protection that we so need to our people wherever they serve.

Mr. MAZZOLI. I thank the gentleman. He makes a very important statement.

The gentleman from Indiana.

Mr. HAMILTON. No comment, Mr. Chairman.

Mr. MAZZOLI. The gentleman from Arizona.

Mr. STUMP. No, thank you.

Mr. MAZZOLI. Thank you very much.

And with this we will have our first witness, and invite the gentleman from Texas, the majority leader of the House of Representatives, to step forward.

The gentleman, of course, needs no introduction. Jim Wright is our majority leader, and for today's purposes, a long-time supporter and an early sponsor of a measure to protect the identities of our intelligence agents who are posted undercover.

As an ex officio member of our committee, I would suggest to the audience the gentleman from Texas has devoted a great deal of what is very precious time to him in the service of this committee, which we very much appreciate, and we look forward to working with him after today's meeting, and look forward to hearing from him today.

Mr. Majority Leader, you may proceed.

STATEMENT OF HON. JIM WRIGHT, A REPRESENTATIVE IN CONGRESS FROM THE 12TH DISTRICT OF THE STATE OF TEXAS, AND MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES

Mr. WRIGHT. Mr. Chairman, thank you very much.

I will try to be brief because I know you have other witnesses, and some who can testify with more clarity and more knowledge than I possess.

I think one of the greatest unfortunate failures of the last Congress was that we allowed the hourglass of time to expire upon the session before we took action upon a bill that had been approved by this committee and approved in identical form by the Committee on the Judiciary. I hope that won't happen this year. Insofar as it lies within my power as the majority leader to help assure that action is taken, I would like to commit myself to that premise.

I don't think there are many other things that cry out as urgently as this does for action by Congress. It is an interesting commentary upon our times that in the past 2 years more ambassadors have lost their lives than generals. It has reached the point where to serve the United States abroad in a civilian capacity has become a dangerous thing in itself.

It also has reached the point where, because we have tolerated abusive disclosure of the identities of our undercover agents by rogue agents who formerly worked for and supped at the trough of the United States, we have driven away many people who otherwise would

be supportive of our efforts. We have made infinitely more difficult the necessary task of an intelligence gathering apparatus to elicit the cooperation of foreign nationals. Obviously if we aren't going to protect our own, then we can't expect foreign nationals to believe we will offer them any measure of protection when they work with us.

And if we suffer them to see the cover which has been so assiduously provided by a CIA operation blown publicly by a U.S. citizen who then goes scot-free without any attempt being made by the Government of the United States to stop that kind of action, then those people abroad certainly are not going to be prone to help us. They are going to have contempt for us, it would seem to me.

Several instances already have been cited by this committee. On the 4th of July last the home of a senior U.S. Embassy official in Jamaica was machinegunned and bombed. Luckily, Richard Kinsman, the First Secretary of the Embassy at Kingston, was not hurt. But that was not the fault of the Covert Action Information Bulletin and its publishers who, 2 days prior to that event, had declared that Mr. Kinsman was a CIA agent and had given out his home address, the description of his automobile, his telephone number, his automobile license tag and so forth.

And that isn't by any means the first time anything of that kind has occurred, nor will it be the last.

In 1975, of course, Richard Welch in Greece was slain after that same group had identified him as a CIA agent. That was 1975, and here we are almost 6 years later.

And so it seems to me that in the interest of our own Nation, in a dangerous world where the difficult and delicate task of gathering information can be absolutely vital to our life as a nation, we absolutely have the responsibility to provide this kind of protection to those who offer their lives in this hazardous profession in defense of this country. We owe it to them and we owe it to ourselves and we owe it to the Nation to do so.

I think care has been taken in the drafting of this legislation to see to it that it doesn't violate anybody's constitutional rights. I can't really understand how anyone could contend that it does. Manifestly, there is no constitutional right to publish information about troop movements during a time of war. In a world as complex as ours has grown the necessity for the United States to have reliable, up-to-date information about what is going on in the world might be likened to the need for information in an earlier age, when time allowed slow, manipulative decisions to be made like a game of chess, only now the tempo is that of a game of table tennis, and it is more vital than ever before that this Nation be able to anticipate events abroad so as to influence those events, or at least to protect our own people from being adversely affected by them.

We were taken by surprise in what occurred a couple of years ago in Iran. Nobody in the United States had any real expectation that something like that might happen. We have been taken by surprise by some of the things that have occurred as close to home as Central America, for example. We desperately need, if we are to compete in this world of ideas and in this world of intrigue with information and knowledge, we desperately need a first-rate intelligence-gathering apparatus.

Now, there is nothing in this bill whatever which would violate the constitutional rights of any journalist or any other individual, nothing in here which would prevent some columnist from writing a story which says that the United States has plans to invade Ethiopia or San Salvador or any other place on Earth. However ridiculous that may be, the right to be wrong is equally protected with the right to be right, where free speech is concerned. There is nothing in this bill that would have kept the New York Times from revealing the Pentagon papers. There isn't anything in this bill that would keep a journalist from criticizing the plans or the policies of the CIA or any other agencies that we possess. There isn't anything in this bill that would prevent someone from criticizing an action of the CIA that might be contemplated, if one were contemplated, to destabilize a government abroad. There isn't anything in this bill that would give sanction to any such action as that.

But there is something in the bill that would keep people who publish this vicious magazine, to which I have earlier referred, from publishing a section such as the one they call naming names in which they purport to list the names of all the CIA officers that they can discover, and it seems to me that in balancing this careful need, and the twin necessities that were mentioned by Mr. Fowler, my friend from Georgia, this bill strikes the right balance. It protects all of the legitimate constitutional rights of any American citizen, and it begins a means of restoring our capacity as a Nation to protect ourselves by gathering information abroad.

That is the sum of my statement. I sense that most of the members of the committee favor the bill. I would urge you to act expeditiously in memory of what happened in the last Congress when people found reason and excuses to drag their feet long enough that we didn't get a bill passed, though manifestly a majority of the members of this committee and of the Committee on the Judiciary wanted one passed.

Mr. MAZZOLI. Mr. Majority Leader, let me thank you very much for the eloquent statement, one that I think makes as clearly as possible the dramatic need for this legislation.

Let me assure you that for my part—and I am sure I speak for my colleagues—that there will be no temporizing on this committee with regard to moving this bill or some version of it. And of course, you have already—you said early in your statement it would be your wish and that of your colleague Mr. Michel to do whatever is possible from the leadership standpoint to be sure that it moves expeditiously when it gets out of here. So you can be assured of that.

Mr. WRIGHT. That is correct, and as you have just indicated, and I want to stress, there isn't anything partisan about this bill at all. Bob Michel is every bit as dedicated to it as I am, and I want to make that point clear.

Mr. MAZZOLI. Mr. Majority Leader, I would just ask you one very brief question because you have business you must attend to.

It is your position, and it is mine, and I have earlier stated, that you can criticize, hold up to scorn and ridicule, challenge, investigate without naming names. Is that basically your feeling?

Mr. WRIGHT. Yes, that I think is a fair summation of it. You can criticize a policy of the Government, you can criticize a policy of the CIA, you can do any of those things that you otherwise could do

except to identify those secret agents of the U.S. Government in published form with the purpose of disrupting the intelligence gathering capacity of the United States.

Mr. MAZZOLI. It would seem to me that the challenge, the criticism would be just as pointed and just as effective without naming the names, but stating the circumstances, and I would agree with you that we can do that within the parameters of this bill.

The gentleman from Illinois is recognized for 5 minutes.

Mr. MCCLORY. Thank you, Mr. Chairman.

I also want to commend you, Mr. Wright. I think it is highly significant that the majority leader and the minority leader of the House of Representatives are stepping forward on this legislation, recognizing the importance of this measure to our intelligence agencies and to the security of our Nation.

We seem to have no problem with those parts of the bill which relate to the disclosure by employees of the CIA who gain information confidentially in connection with their employment. We have no fault to find with that part of the bill which relates to some persons who may not have access to the information because of their position but nevertheless gain access to the identities of agents operating undercover as a result of their employment.

The problem arises when we get to that third part where it is a third party, not employed by the CIA or other intelligence agency, but who nevertheless comes into possession of knowledge about an agent operating undercover and then discloses that with intent to impede our foreign intelligence activities.

Now, I am wondering whether you feel that that part of the bill which would, of course, affect the media as well as other third persons, should be qualified if the information is secured from a source overseas, for instance, or from a public source by just getting the information in some other way than surreptitiously, but nevertheless disclosed with intent to impede our national security? If those elements are present, do you not feel that the strictures of the law and the penalties of the law should apply, notwithstanding that a third party, including the media, are involved?

Mr. WRIGHT. Mr. McClory, I definitely believe that anyone who makes such a disclosure with such an intent should come under the strictures of the law.

Now, you know as well as I, as a distinguished member of the Judiciary Committee, you know probably far better than I, that this creates a most difficult task for anyone who would seek to prosecute. If you have to prove intent, it becomes extremely difficult. The burden of proof lies upon anyone who would bring the charge against an individual; to prove the intent to damage the foreign operations of the United States, its capacity to gather intelligence, or to harm the United States intentionally, purposely, is a difficult thing to do. Those of us who are in public life might draw a general parallel from the Supreme Court ruling of some few years ago which established a difficult test for anyone in public life to prove libel, for example. You have to prove malice, you have to prove that not only that what was said about you was untrue, but that it was published with the knowledge that it was untrue, and with a deliberate intent to malign. Now, that has become a quite difficult test, and relatively few have achieved a prosecution.

Mr. McCLORY. You still feel that the element of intent is important to retain in the bill. That is the language which you and I use.

Mr. WRIGHT. I would retain that for the third party, yes, I would.

Mr. McCLORY. I might say that the Senate version refers to "reason to believe" which may be less clear and could raise grey-mail problems.

Mr. WRIGHT. Mr. McClory, in the application of criminal penalties, I believe the term "reason to believe" is so broad and loose that it ought to be rejected for a more specific finding.

Mr. McCLORY. Thank you.

Thank you, Mr. Chairman.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Georgia is recognized for 5 minutes.

Mr. FOWLER. I have no questions except to thank the majority leader for his leadership and his participation.

Mr. MAZZOLI. Thank you.

The gentleman from Ohio.

Mr. ASHBROOK. Thank you, Mr. Chairman.

I would say to our majority leader. I am very pleased with your testimony. There is one area in this whole subject that I spent some time on last year, and I see again is missing this year. That is the area of false identification, where somebody does exactly the same thing except the person he identified is not a member of the CIA. It doesn't seem we ought to leave those people out of the coverage.

We have, oh, I think three or four situations. The one in Jamaica was probably the worst, where two American officials were identified falsely as members of the CIA, and shortly after that they were attacked. You know, you always have the problem of linking the attacks to the identification, so you would have the same standards.

Do you as a matter of personal preference, without getting into all the ramifications, have a concern and would you like to see the legislation cover areas like that? Have you thought it through and do you think it should not be covered?

Mr. WRIGHT. Mr. Ashbrook, I certainly would have no objection to making the legislation applicable to the false disclosure or the erroneous disclosure of an individual, just as it would apply to the accurate disclosure. If, for example, someone were to publish a document saying that John Ashbrook was a member of the CIA and engaged in some kind of operation in which you were not engaged, and somebody as a result of that undertook an attempt upon your life, it would be just as hurtful to you as though you were a member of the CIA, and I think just as culpable.

I would have no objection personally to seeing the legislation broadened to include that.

As a matter of fact, I had not focused upon the fact that it didn't include such a situation.

Mr. ASHBROOK. I noticed Mr. Carlucci last year, in testifying on the bill on this subject, indicated, and I quote:

> The activities that these bills attempt to deal with are a systematic, purposeful job of uncovering identities and are conducted with a clear understanding evidenced by an expressed intent that their effect will be to impair or impede legitimate U.S. intelligence activities.

As I raised at that time, the same statement could apply, whether the person were correctly identified as a CIA agent, or whether he was falsely identified. In some cases, maybe the man who is falsely identified deserves a degree of protection.

Mr. WRIGHT. Of course he does.

Mr. ASHBROOK. Thank you, Mr. Mazzoli.

Mr. MAZZOLI. I thank the gentleman from Ohio.

The gentleman from Indiana.

Mr. HAMILTON. No questions.

Mr. MAZZOLI. The gentleman from Virginia.

Mr. ROBINSON. No questions, Mr. Chairman.

Mr. MAZZOLI. The gentleman from Massachusetts?

Mr. BOLAND. It would seem to me, Mr. Majority Leader, that there is a danger in Mr. Ashbrook's approach of applying the bill's coverage to one who has been falsely accused. We have had enough difficulty with the bill as it is, and I think this broadens the approach and I think perhaps makes it much more difficult for passage of it.

Someone who has been falsely accused has other remedies. But when you criminalize someone for telling a lie, I think that we are broadening this bill beyond the scope that this committee desires.

What would you say to that?

Mr. WRIGHT. I don't want to get in the middle of that big fight. [General laughter.]

Mr. WRIGHT. I don't know exactly what remedies presently exist for somebody falsely identified. I would presume that some remedies may exist. I would have no personal objection to broadening the bill, but if the chairman of the committee in his judgment feels that it would open up a new Pandora's box of problems for enactment of the legislation, then I would be content to get what we could get. I think we desperately need to get something, and get it expeditiously.

Mr. BOLAND. Well, I am delighted to get that reaction because John Ashbrook is a very persuasive individual. I want to make sure that we can get by without having some of the problems that might entail in the Judiciary Committee and on the floor, too.

Thank you very much.

Mr. MAZZOLI. The gentleman's time is up.

The gentleman from Florida.

Mr. YOUNG. Thank you, Mr. Chairman.

I would like to get right in the middle of this argument. Mr. Ashbrook is right and Chairman Boland is also right, but it is not an isolated case. The Jamaican incident that Mr. Ashbrook mentioned did happen. We also know, on January 3 of this year, Michael Hammer and Mark Perleman, AFL-CIO representatives, were murdered in San Salvador, and they, too, had been falsely identified as CIA representatives by Counterspy, which is another one of those types of magazines.

So I think it is something, Mr. Chairman, that we ought to approach, certainly with great caution. It is a real problem and evidently growing.

Mr. MAZZOLI. I thank the gentleman from Florida, and certainly all suggestions that we have from the panel and from the witnesses

for the next 2 days will be considered by the committee when it reports out the bill.

The gentleman from North Carolina.

Mr. ROSE. Thank you, Mr. Chairman.

Mr. Leader, I think you have done an excellent job in bringing this to our attention. I have only one caveat, not for you but for the intelligence community, and as much as this bill will do to solve the problem of agent disclosure, it will not do it all. The Agency, in my opinion, has a tremendous responsibility in providing adequate cover for its agents, and while your bill will probably go much further than any other single act that has happened lately to provide the kind of protection that agents need, we shouldn't swing the total focus on the Congress as if it were our total responsibility. The Agency has an overpowering responsibility to provide adequate cover to its agents so their names aren't disclosed in the first place.

And I thank you for your consideration.

Mr. WRIGHT. Mr. Rose, I would respond only by saying that it is irksome and a little bit embarrassing to me that these names can be disclosed.

Now, in saying that I suppose I am drawing an assumption which may be unwarranted. I guess subconsciously I have been drawing the assumption that the publishers of these names were correct in the identification they made, but as a result of some of the things that have been pointed out to me by Mr. Young and Mr. Ashbrook, it may well be that most of the names whom they identify as CIA agents really in truth are not CIA agents but rather civil servants of another type serving the U.S. Government, in which case that manfestly is bad, too.

But if you put these people out of business, then they are going to be out of business whether they are right or whether they are wrong.

I agree with you that the CIA, if it is to be a credible agency, does have responsibility to firm up its own protections. But I am not sure that we should jump so quickly to the conclusion that it has been faulty because it is altogether possible that the man Agee and those who work with him may indeed be as inaccurate as some of the other things that are published.

Mr. MAZZOLI. I thank the gentleman from North Carolina and the gentleman from Texas.

We did have, as the gentleman knows, some briefings on the question of cover, and it is a very important topic that is woven throughout this whole question.

Mr. Majority Leader, we thank you very much for taking the time to join us. We appreciate your testimony, and we will be working with you in the months ahead.

Mr. WRIGHT. Thank you very much.

Mr. MAZZOLI. Our next witness, I might say to our colleagues on the committee and the audience, was to have been Congressman Bob Michel, the minority leader of the House. Congressman Michel was called to the White House this afternoon, but he asked that I make his statement a part of the record, which, without objection, it will be so ordered.

[The prepared statement of Representative Michel follows:]

STATEMENT OF HON. ROBERT MICHEL, MINORITY LEADER, U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman, I thank you for granting me the opportunity to testify before the Subcommittee on H.R. 4, The Intelligence Identities Protection Act.

I am certainly pleased that these hearings have been scheduled at the start of the 97th Congress, and I want to join with the distinguished Majority Leader in urging you to move most deliberately so as to bring the bill to the floor for early consideration—which I am sure will find strong bipartisan support.

Mr. Chairman, when I heard of the murder of our CIA station chief in Athens on December 13, 1975, it did much to dampen the spirits of the Christmas season. I was saddened to learn of the violent ending of a human life. I was saddened to learn that an American, serving in the highest tradition of public service, had been gunned down at his home by a band of terrorists. But the tragedy was double-edged. The death of Richard Welch resulted from a public disclosure of his relationship with the CIA, made not by our adversaries, but by misguided, irresponsible and callous Americans who for some reason assumed they could sit in judgment over the very life of another human being. The publishers of Counterspy, who exposed Richard Welch to mortal danger, brought disgrace upon the journalistic profession and upon all Americans. They also made necessary some form of action by the Congress.

It was not for me to sit in judgment over them or their motivation back then, but it was, I thought, a matter of urgency for the Congress to denounce what they had done and take whatever steps we could to protect against a reoccurrence.

That is why in January of 1976 I introduced a bill to criminalize the disclosure of the identities of our intelligence agents. It was a first attempt, to be sure, and I am pleased by the work this Committee has performed to produce a bill as comprehensive, expertly crafted and well-managed as H.R. 4. The need for this legislation has not diminished since 1975, and it is still imperative that we act expeditiously.

The hearings which you are holding today and tomorrow, when coupled with the extensive record made in both Houses last year, should make abundantly clear the need for this legislation. We must provide a way to protect our intelligence officers and agents from having their identities willfully disclosed with reckless candor. For, it is truly only to the extent that their identities are protected that, indeed, their lives are protected.

Thank you.

Mr. MAZZOLI. And I would like just to make his statement, in the form of one paragraph, particularly a part of the record, and I would quote the minority leader's message in this fashion:

> The hearings which you are holding today and tomorrow, when coupled with the extensive record made in both Houses last year, should make abundantly clear the need for this legislation. We must provide a way to protect our intelligence officers and agents from having their identities willfully disclosed with reckless candor. For, it is truly only to the extent that their identities are protected that indeed their lives are protected.

So we appreciate the support of the minority leader, and his statement to us today and his activities in the past would indicate that he intends to work hard to get a bill passed.

I would like to now call forward the gentleman who is the Director of the Central Intelligence Agency and his colleagues.

Mr. Casey is a familiar face in government and has held important posts under every President since Franklin Delano Roosevelt. Mr. Casey now serves as a member of President Reagan's Cabinet, but most importantly for our purposes, also as Director of Central Intelligence.

He is accompanied this afternoon by Mr. John McMahon, the Deputy Director of Operations and Mr. Daniel Silver, who is the General Counsel for the Central Intelligence Agency.

Today, I might say to our colleagues, marks the first time that Mr. Casey's schedule has permitted him to join us in this room before our

committee. Of course, we very frequently have had the pleasure of visiting with Mr. McMahon and Mr. Silver.

I would like to recognize the gentleman from Massachusetts for a statement.

Mr. BOLAND. I would like to welcome you, Mr. Casey, to what I trust will be the first of many appearances before this committee.

May I also digress from the business at hand for just a moment to pay tribute to the two gentlemen who accompany you. John McMahon has served his country as an intelligence officer for 30 years, most recently as Deputy Director of Central Intelligence for the intelligence community staff, and for the last 3 years as Deputy Director of Operations, a highly sensitive position. He has impressed me, and I am sure he has impressed all the members of this committee, as an outstanding and an upstanding public official. I am unfortunately unable to say much more publicly about his career, but I will say that there is no witness who has appeared before this committee who has been received as warmly or whose integrity has been as highly regarded as John McMahon.

The best news of all is that he will remain at the CIA where he will soon head the National Foreign Assessment Center, the Agency's analytic arm, and which we know, as Mr. Casey does, the quality of analysis will receive a shot in the arm with his particular assignment. The job of improving analysis is a top priority for Mr. Casey, as it has been with this committee, and I believe that Mr. McMahon's presence at NFAC will be felt, and I applaud his selection.

Mr. MCMAHON. Thank you.

Mr. BOLAND. Mr. Chairman, today may well mark the last official appearance of Dan Silver as General Counsel at CIA. He leaves CIA at the end of this month to return to private practice after nearly 4 years as General Counsel at the National Security Agency and the Central Intelligence Agency. He has been a frequent witness before the committee on a number of difficult legal issues. I have always been impressed by his intelligence, his tenacity, and the consistency with which he has advanced the interests of his client. He is an excellent advocate. He also tells some of the worst jokes I have ever heard. [General laughter.]

Dan, I am sure the Agency will miss you. The committee, however, will continue to request your services from time to time. As you yourself might say, "old General Counsels don't die, they merely become public witnesses."

Mr. SILVER. Thank you, very much.

Mr. MCCLORY. Mr. Chairman, would you yield to me?

I just want to join in the remarks of welcome and the tributes that have been paid by our distinguished Chairman of the Full Committee, the gentleman from Massachusetts, Mr. Boland, and also to extend a special warm welcome to the new Director of Central Intelligence, Mr. Casey. I am aware already of the very strong, supportive position which you are taking to continue the strengthening of our intelligence agencies, and I look forward to working closely with you in behalf of legislative programs and other activities which can assist you in seeking the goals that I know you have for the great Central Intelligence Agency.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, very much.

Mr. Casey, you may proceed. Your statement is made a part of the record without objection, and we welcome you.

[The prepared statement of Mr. Casey follows:]

STATEMENT OF WILLIAM J. CASEY, DIRECTOR OF CENTRAL INTELLIGENCE

Mr. Chairman, I am pleased to appear before the Permanent Select Committee on Intelligence today to testify in favor of enactment of H.R. 4, the "Intelligence Identities Protection Act of 1981."

The Intelligence Community's support for legislation to provide criminal penalties for the unauthorized disclosure of information identifying certain individuals engaged or assisting in the foreign intelligence activities of the United States is well known. I want to emphasize that this Administration believes that passage of the "Intelligence Identities Protection Act" is essential to the maintenance of a strong and effective intelligence apparatus. Enactment of this legislation is an important component of the Administration's effort to implement President Reagan's determination to enhance the Nation's intelligence capabilities.

As you pointed out in your recent letter to me, "the unfortunate events that gave rise to the need for [this] legislation are continuing apace." Mr. Chairman, there exists a coterie of Americans who have openly proclaimed themselves to be devoted to the destruction of the Nation's foreign intelligence agencies. This group has engaged in actions avowedly aimed at undermining the Nation's intelligence capabilities through the identification and exposure of undercover intelligence officers. The perpetrators of these disclosures understand correctly that secrecy is the life blood of an intelligence organization and that disclosures of the identities of individuals whose intelligence affiliation is deliberately concealed can disrupt, discredit and—they hope—ultimately destroy an agency such as the CIA. Some of the persons engaged in this activity have actually traveled to foreign countries with the aim of stirring up local antagonism to U.S. officials through thinly veiled incitements to violence.

The tragic results of unauthorized disclosures of intelligence identities are well known. Five years ago. Richard Welch was murdered in Athens, Greece. Last July, only luck intervened to prevent the death of the young daughter of a U.S. Embassy officer in Jamaica whose home was attacked only days after one of the editors of a publication called Covert Action Information Bulletin appeared in Jamaica, and at a highly publicized news conference gave the names, addresses, telephone numbers, license plates, and descriptions of the cars of U.S. Government employees whom he alleged to be CIA officers. Most recently, six Americans were expelled from Mozambique following charges of engaging in espionage. These expulsions followed visits to that country by members of the Cuban intelligence service and the editors of the Covert Action Information Bulletin.

Extensive hearings before this Committee and its Senate counterpart and before the two Judiciary Committees during the 96th Congress documented the pernicious effects of these unauthorized disclosures. Obviously, security considerations preclude my confirming or denying specific instances of purported identication of U.S. intelligence personnel. Suffice it to say that a substantial number of these disclosures have been accurate. Unauthorized disclosures are undermining the Intelligence Community's human source collection capabilities and endangering the lives of our intelligence officers in the field. The destructive effects of these disclosures have been varied and wide ranging.

Our relations with foreign sources of intelligence have been impaired. Sources have evinced increased concern for their own safety. Some active sources and individuals contemplating cooperation with the United States have terminated or reduced their contract with us. Sources have questioned how the U.S. Government can expect its friends to provide information in view of continuing disclosures of information that may jeopardize their careers, liberty, and very lives.

Many foreign intelligence services with which we have important liaison relationships have undertaken reviews of their relations with us. Some immediately discernible results of continuing disclosures include reduction of contact and

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reduced passage of information. In taking these actions, some foreign services have explicitly cited disclosures of intelligence identities.

We are increasingly being asked to explain how we can guarantee the safety of individuals who cooperate with us when we cannot protect our own officers from exposure. You can imagine the chilling effect it must have on a source to one day discover that the individual with whom he has been in contact has been openly identified as a CIA officer.

The professional effectiveness of officers so compromised is substantially and sometimes irreparably damaged. They must reduce or break contact with sensitive covert sources. Continued contact must be coupled with increased defensive measures that are inevitably more costly and time consuming.

Some officers must be removed from their assignments and returned from overseas at substantial cost. Years of irreplaceable area experience and linguistic skills are lost. Reassignment mobility of the compromised officer is impaired.

As a result, the pool of experienced CIA officers available for specific overseas assignments is being reduced. Such losses are deeply felt in view of the fact that, in comparison with the intelligence services of our adversaries, we are not a large organization. Replacement of officers thus compromised is difficult and, in some cases, impossible.

Once an officer's identity is disclosed, moreover, counterintelligence analysis by adversary services allows the officer's previous assignments to be scrutinized, producing an expanded pattern of compromise through association.

Such disclosures also sensitize hostle security services and foreign populations to CIA presence, making our job far more difficult. Finally, such disclosures can place intelligence personnel and their families in physical danger from terrorist or violence-prone organizations.

It is also essential to bear in mind that the collection of intelligence is something of an art. The success of our officers overseas depends to a very large extent on intangible psychological and human chemistry factors, on feelings of trust and confidence that human beings engender in each other and on atmosphere and milieu. Unauthorized disclosure of identities information destroys that chemistry.

Mr. Chairman, I do not believe it is necessary or advisable to go into greater detail about the adverse effects that unauthorized disclosures of intelligence identities are having on the work of our nation's intelligence service. The credibility of our country and its relationships with foreign intelligence services and individual human sources, the lives of patriotic Americans serving their country, and the professional effectiveness of our intelligence officers are all being placed in jeopardy. The underlying basic issue is our ability to continue to recruit and retain human sources of intelligence whose information could be crucial to the Nation's survival in an increasingly dangerous world.

It is important to understand what legislation in this area seeks to accomplish: It seeks to protect the secrecy of the participation or cooperation of certain persons in the foreign intelligence activities of the U.S. Government. These are activities which have been authorized by the Congress; activities which we, as a Nation, have determined are essential. No existing statute clearly and specifically makes the unauthorized disclosure of intelligence identities a criminal offense. As matters now stand the impunity with which unauthorized disclosures of intelligence identities can be made implies a governmental position of neutrality in the matter. It suggests that U.S. intelligence officers are "fair game" for those members of their own society who take issue with the existence of CIA or find other perverse motives for making these unauthorized disclosures.

Mr. Chairman, I believe it is important to emphasize that the legislation which you are considering today is not an assault upon the First Amendment. The "Intelligence Identities Protection Act" would not inhibit public discussion and debate about U.S. foreign policy or intelligence activities, and it would not operate to prevent the exposure of allegedly illegal activities or abuses of authority. The legislation is carefully crafted and narrowly drawn to deal with conduct which serves no useful informing function whatsoever; does not alert us to alleged abuses; does not bring clarity to issues of national policy; does not enlighten public debate; and does not contribute to an educated and informed electorate.

The Bill creates three categories of the offense of disclosure of intelligence identities:

a. Disclosure of information identifying a "covert agent" by persons who have or have had authorized access to classified information that identifies such a

covert agent. This category covers primarily disclosure by intelligence agency employees and others who get access to classified information that directly identifies "covert agents";

b. Disclosure of information identifying a "covert agent" by persons who have learned the identity as a result of authorized access to classified information. This category covers disclosures by any person who learns the identify of a covert agent as a result of government service or other authorized access to classified information that may not directly identify or name a specific "covert agent"; and

c. Disclosure of information identifying a "covert agent" by anyone, under certain specified conditions outlined below.

There is virtually no serious disagreement over the provisions of the legislation which provide criminal penalties for the unauthorized disclosure of intelligence identities by individuals who have had authorized access to classified information. Controversy has centered around subsections 501(c) of H.R. 4.

Disclosures of intelligence identities by persons who have not had authorized access to classified information would be punishable only under specified conditions, which have been carefully crafted and narrowly drawn so as to make the Act inapplicable to anyone not engaged in an effort or pattern of activities designed to identify and expose intelligence personnel. The proposed legislation also contains defenses and exceptions which reinforce this narrow construction. It is istructive, in this regard, to look at the elements of proof that would be required in a prosecution under subsection 501(c) of H.R. 4. Keeping in mind that the government would have to prove each of these elements beyond a reasonable doubt. The government would have to show:

That there was an intentional disclosure of information which did in fact identify a "covert agent;"

That the disclosure was made to an individual not authorized to receive classified information;

That the person who made the disclosure knew that the information disclosed did in fact identify a covert agent;

That the person who made the disclosure knew that the United States was taking affirmative measures to conceal the covert agent's classified intelligence affiliation;

That the individual making the disclosure did so in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States; and

That the disclosure was made with the intent to impair or impede the foreign intelligence activities of the United States.

Because of these strict conditions, subsection 501(c) is narrowly directed at conduct which Congress has the authority and power to proscribe consistent with the First Amendment.

Mr. Chairman, I sincerely appreciate your genuine concern about the maintenance of our intelligence capabilities and I wholeheartedly support your efforts to deal with this very serious problem. I encourage the Committee to proceed to report this legislation favorably.

STATEMENT OF HON. WILLIAM CASEY, DIRECTOR OF CENTRAL INTELLIGENCE AGENCY, ACCOMPANIED BY JOHN N. McMAHON, DEPUTY DIRECTOR FOR OPERATIONS, CENTRAL INTELLIGENCE AGENCY; AND DANIEL B. SILVER, GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Mr. CASEY. Mr. Chairman, members of the committee, I will summarize my statement. The majority leader has detailed some of the things I intended to say and I will not duplicate that, and focus on the matters in my statement that I think are of particular importance.

I would like to say that I am happy to appear before this committee and look forward to many other appearances in the future. I am available any time I can be of help.

I would also like to say, would like to follow up a little bit on the remarks of the chairman of the full committee, I think it is a very

auspicious thing that John McMahon, who has this experience in every phase of the community's intelligence gathering activities, will now direct the analytical activity which has to assess and make sense out of all this vast array of information and facts that we have. And I think this background that will be brought to bear for the first time on the analytical process will be very important in improving performance.

And I regret that as I come on board, Dan Silver is going back to the private practice of law. I appreciate his willingness to—at my request he stayed on an additional couple of months, and as he leaves, he is going to leave his telephone number behind so that we can reach him if we need him.

The intelligence community's support for legislation to provide criminal penalties for the unauthorized disclosure of information identifying certain individuals engaged or assisting in the foreign intelligence activities of the United States is well known and has been much discussed. I want to emphasize that this administration believes that passage of this legislation is essential to the maintenance of a strong and effective intelligence apparatus. Enactment of this legislation is an important component of the administration's effort to implement President Reagan's determination to enhance the Nation's intelligence capabilities.

I might say that coming into this undertaking and this work only 2 months ago, I have been appalled at the degree to which concerted activity is being and can be carried out around the world to undermine and destroy a capacity which is critical to our national security and which has been painstakingly built up over many years with an investment of billions and billions of dollars, can be put in jeopardy by the kind of activity we have seen in many foreign countries in the few weeks I have been on the job.

As you pointed out in your recent letter to me, Chairman Boland, "the unfortunate events that gave rise to the need for this legislation are continuing apace." Mr. Chairman and members of the committee, there exists a coterie of Americans who have openly proclaimed themselves to be devoted to the destruction of the Nation's foreign intelligence agencies. This group has engaged in actions avowedly aimed at undermining the Nation's intelligence capabilities by identifying and exposing undercover intelligence officers. The perpetrators of these disclosures understand correctly that secrecy and confidentiality is the lifeblood of an intelligence agency, and the disclosure of the identities of individuals whose intelligence affiliation is deliberately concealed can disrupt, discredit, and they hope, ultimately destroy an agency such as the CIA.

Some of the persons engaged in this activity have actually traveled to foreign countries with the aim of stirring up local antagonism to U.S. officials through thinly veiled incitements to violence. And this has created untold damage, and will in the future if not stopped, create untold and continuing damage to the credibility, reliability, and reputation of our intelligence agencies, and indeed, that of the Nation itself.

Now, the majority leader detailed the tragic events in Greece and Jamaica, the lives that were lost there by this kind of disclosure. Still

more recently six Americans were expelled from Mozambique following charges they were engaging in espionage. These expulsions followed visits to that country by members of the Cuban intelligence service and by the editors of the Covert Action Information Bulletin.

Gentlemen, I do not think it necessary to go into great detail about the adverse effects that unauthorized disclosures of identities are having on the work of the Nation's intelligence agencies. Simply put, the credibility of our country and its relationships with foreign intelligence services and individual human sources, the lives of patriotic Americans serving their country, and the professional effectiveness of our intelligence officers all over the world are all being placed in acute and continuing jeopardy. Extensive hearings before the House and Senate Intelligence and Judiciary Committees last year documented these effects. The underlying basic issue is our ability to continue to recruit and retain human sources of information whose information could be crucial to the Nation's survival in an increasingly dangerous world, and our relations with intelligence services who provide a large portion of the intelligence on which we rely have been placed in jeopardy and are in continuing jeopardy.

It is important to understand what this legislation seeks to accomplish. It seeks to protect the secrecy of the participation or cooperation of certain persons in our intelligence activities. These are activities which have been authorized by the Congress, activities which we as a Nation have determined as essential. Yet no existing statute clearly and specifically makes the unauthorized disclosure of intelligence identities a criminal offense. As matters now stand, the impunity with which unauthorized disclosures can be made implies a government position of neutrality on a matter of the gravest concern. It suggests that U.S. intelligence officers are fair game for those members of their own society who take issue with the very existence of CIA and find other motives for making these unauthorized disclosures.

Mr. Chairman, I believe it is important to emphasize that the legislation being considered today is not an assault upon the first amendment. It would not inhibit public discussion and debate about U.S. foreign policy or U.S. intelligence activities. It would not operate to prevent the exposure of allegedly illegal activities or abuses of authority. The legislation is very carefully crafted and narrowly drawn to deal with conduct which serves no useful informing function whatsoever; it does not alert us to alleged abuses; does not bring clarity to issues of national policy; does not enlighten public debate; and does not contribute to an educated and informed electorate.

The bill creates three categories of this offense of disclosure of intelligence identities. The first is the disclosure by persons who have had authorized access to classified information that identifies such a covert agent. This category covers primarily disclosure by employees of the intelligence agency and others who get access to classified information that directly identifies covert actions.

The second category is disclosure by persons who have learned the identity as a result of authorized access to classified information. This category covers disclosures by any person who learns the identity of a covert agent as a result of Government service or other authorized access to classified information that may not directly identify or name a specific agent.

And finally, it covers disclosure of information identifying a covert agent by anyone, and this is under very limited and carefully specified conditions.

There is virtually no serious disagreement over the provisions of the legislation which provide criminal penalties for the unauthorized disclosure of intelligence activities by individuals who have had authorized access to classified information. Controversy surrounds subsection 501(c) of this bill.

Disclosures of intelligence identities by persons who have not had authorized access to classified information would be punishable only under very carefully specified conditions, carefully crafted and narrowly drawn so as to make the act inapplicable to anyone not engaged in an effort or pattern of activities designed to identify and expose intelligence personnel. The proposed legislation also contains defenses and exceptions which reinforce this narrow construction.

It is instructive in this regard, then, to take a look at the elements of proof which would be required to successfully prosecute a person under subsection 501(c). The Government would have to prove each of these elements beyond a reasonable doubt.

They would have to show, first, that there was an intentional disclosure of information which did in fact identify a covert agent; second, that the disclosure was made to an individual not authorized to receive classified information; third, that the person who made the disclosure knew that the information disclosed did in fact identify a covert agent; fourth, that the person who made the disclosure knew that the United States was taking affirmative measures to conceal the agent's intelligence affiliation; five, that the individual making the disclosure did so in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States; and finally, that the specific disclosure was made with the intent to impair or impede the foreign intelligence activities of the United States.

Now, because of these strict conditions so narrowly directing the statute and the conduct which the Congress has the authority and power to proscribe consistent with the first amendment, I think there can be no doubt about its constitutionality.

I would like to say, I would like to make two observations in closing. First, this legislation as drawn still leaves individuals who come into possession of classified information and thereby learn the name of an individual agent free to disclose it with impunity, no liability of any kind, for the purpose of frustrating a particular intelligence activity. If it is a particular operation that they want to blow wide open, this statute doesn't reach them. And I leave to you the implication of that continuing vulnerability and the other vulnerabilities we continue to carry.

But I felt the obligation to point out that in so carefully protecting the rights of discussion and the rights of individuals, that we are only talking about reaching individuals who are engaged in a concerted effort, a continuing pattern of activity which, as I say, leaves open the possibility that people are still free to blow open a particular activity.

And the second observation is that despite this particular limitation and maybe others, this bill will deal with a clear and immediate

danger which currently, every day, jeopardizes and endangers not only our intelligence activities but the lives of those who work for our Government and those in other countries who wish to cooperate with us. And I want to express gratitude and appreciation to this committee for so promptly bringing this legislation forward and beginning to process it, and express the hope that it will be enacted into law as quickly as possible so that this jeopardy which is hanging over our heads is removed and we are able to reassure not only our own personnel, but those who work with us around the world and those who cooperate with us, and those who go out and provide information to meet our needs.

Mr. Chairman, thank you very much, members of the committee.

I will be happy to answer any questions that you would like to put to me.

Mr. MAZZOLI. Thank you very much, Mr. Casey, for a fine statement and for your appearance today.

I would yield myself 5 minutes now for just a very few questions.

In making your statement, have you had a chance to speak to President Reagan or to people with him with regard to the position that those around him would take on this, and is he in favor of this bill?

Mr. CASEY. Yes, I have. I have reported to the NSC meetings that this legislation is being put forward and introduced by this committee, and he——

Mr. MAZZOLI. And so he would support the bill and——

Mr. CASEY. Thoroughly, thoroughly.

Mr. MAZZOLI. Very fine. Thank you.

Mr. Casey, as you have known, 501 (a) and (b) pose no great problem because in both of those instances there is a breach of trust. In one case there is an access to the specific names; in another case, access to classified information which can be used to yield the names. It is only in the area of the 501(c), which is what you have said, that there is some concern and some difference of opinion.

And with respect to that, I would just ask you a philosophical question. Do you believe that this kind of activity naming names which can be derived from information in the public domain, is still sanctionable and should be penalized when its purposes is to upset the activities and capabilities of the United States?

Mr. CASEY. Yes, I do.

Mr. MAZZOLI. And in some ways, would you suggest that while there are obviously constitutional implications, there always are in this case, that they have been—and you are a lawyer and have a lot of background in working in government, in the legal side—that they are solved to your general satisfaction?

Mr. CASEY. I think they are solved which is why I am confident of the constitutionality of the bill, and as I indicated, I think the committee has been very careful in limiting the reach of this bill.

Mr. MAZZOLI. Thank you.

May I ask your Counsel Mr. Silver a question?

Mr. CASEY. Certainly.

Mr. MAZZOLI. Thank you.

Mr. CASEY. Mr. Silver and Mr. McMahon are both available.

Mr. MAZZOLI. Mr. Silver, let me ask you the question that is one of many in this area of 501(c). The standard of proof, the double intent

which is in the version before us, H.R. 4, and the reason to believe standard which the Senate is using, could you maybe give us a few words of wisdom on that as to whether you believe the double intent is the best way to go or whether the reason to believe is a preferable avenue?

Mr. SILVER. I think the witness from the Department of Justice will express the views of those who would have to carry forward any prosecution under this bill in favor of the reason to believe standard as imposing a lesser burden on the Government, making the practicalities of prosecution more likely. Obviously from the Agency's point of view we want a bill that will work, that will serve a deterrent purpose, and if violated, that can effectively be prosecuted.

I have personally a great deal of optimism that a prosecution could be carried forward successfully under either version of the bill.

Mr. MAZZOLI. Under the double intent as well.

Mr. McMahon, I would ask you one question as a person who has worked with agents in the field. That has been your profession for these years. Do you think that a bill like H.R. 4 is necessary from the standpoint of giving your people the opportunity to do what they are paid and sworn to do?

Mr. SILVER. Indeed, Mr. Chairman. In fact, as the majority leader so eloquently put it, our sources wonder how we can possibly protect their identity if we can't protect the identity of our own staffers. And I feel it is essential. We don't know how many opportunities we have missed. We do know that foreign liaison services have demurred from association with us. They have indicated that they have refrained from providing us with information because of the fear of exposure, and we have had sources who were indeed employed by us for years refuse to further cooperate because of fear of their identity being exposed.

Mr. MAZZOLI. Thank you.

Let me ask you one last question .One of the concerns that we have had in this is that this bill may be overbroad.

Do you think H.R. 4 should go beyond CIA officers to include assets and informants?

Mr. MCMAHON. It definitely should include anyone, associated with the intelligence activities of this Government.

Mr. MAZZOLI. I thank you. My time has expired.

The gentleman from Illinois?

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. Casey, I know that you have several legislative initiatives, several subjects on which you want to see some legislative changes, including, I believe, the Freedom of Information Act and possibly the Foreign Intelligence Surveillance Act.

However, the top priority as far as your agency is concerned I believe is enactment of the identities of agents legislation, is it not?

Mr. CASEY. Yes, Mr. McClory, that is our top priority.

Mr. MCCLORY. And until we enact this statute, you really don't have anything to rely upon, do you, except the agreement that is signed when people come to work in the CIA when faced with the faithlessness of those who violate the agreement, either while they are working or after they leave and decide they are going to write

books or expose individuals and identify them, or get into the publication of some kind of a sheet that would disclose the identities of these individuals?

Mr. CASEY. Well, measured against the damage done, the damage potential, what we have now is almost nothing. The contractual right to enforce a contract, I think that goes pretty much to broadly published information.

Mr. MCCLORY. Until we enact this, we don't really have the tools, do we, to prosecute or to deter those who would continue their faithless, disloyal conduct.

Mr. CASEY. That is entirely right.

Mr. MCCLORY. Mr. Silver, you have indicated that you feel that the Department of Justice may prefer the language of the Senate bill with its "reason to believe" standard.

The reason to believe test, however, it seems to me is going to continually put the burden on the prosecution to disclose classified information. In other words, we are going to find that the so-called greymail situation will arise in which the defendant says, well, I can't defend myself unless you make available to me classified information, and then we will have the prosecution required to come forward with classified information which will be heard in secret by the court and then the court will decide whether or not that information is necessary for the defense, and so on.

Is it not true that if we would adopt the language of the House bill, the bill that is sponsored by Mr. Boland, Mr. Mazzoli and myself, and others, that we would not be confronted with that kind of a problem?

Mr. SILVER. I think, Mr. McClory, that it certainly is accurate that there would be less of an opening for the defendant under the House version to attempt, for example, to obtain discovery of classified intelligence materials. Nonetheless, I would hope that if there were—if the Senate bill were enacted and there were a prosecution under that bill—that the courts would take the position that what the defendant and the public don't know is really irrelevant to the reason-to-believe standard, which is akin to the reasonable-man standard that is found in tort law and elsewhere. But there certainly is a danger the courts would hold the other way.

Mr. MCCLORY. And we would hope that they would apply the greymail bill warily so that we wouldn't frustrate prosecutions.

It has also been suggested that maybe we ought to adopt both standards: That the person can be charged with a violation of this act if he or she has reason to believe—or if he or she has the intent to impede our intelligence activities.

What do you think about any legislation that would have that kind of an alternative in it?

You are my lawyer today.

Mr. SILVER. All right.

I think that again, looking at it from the Agency's desire to have an effective and usable statute, that anything that gives the prosecutor two strings to his bow is probably desirable.

Mr. MCCLORY. Would it not be more difficult, however, with the alternative, that the test which would have to be complied with would be uncertain?

Mr. SILVER. You are talking about the reason to believe——

Mr. MCCLORY. The either/or, yes.

Mr. SILVER. Well, I think if the bill were phrased in the alternative, the prosecution could presumably opt for either of these two formulations, whichever one it thought it could prove.

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Georgia is recognized for 5 minutes.

Mr. FOWLER. Mr. Casey, we also welcome you.

May I ask you, Mr. Silver, if you have not already done so, would you for the record give us the Agency's official position on the alternative to section 501(c) of H.R. 4, specifically, the Senate Judiciary Committee's language in S. 2216 of the 96th Congress, and second, the so-called Kennedy compromise to the judiciary bill's language.

If you would submit that at some time in the future, we would appreciate it.

Mr. SILVER. I would be glad to do that.

[The information referred to follows:]

THE DIRECTOR,
CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., April 29, 1981.

HON. EDWARD P. BOLAND,
Chairman, Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the reecnt hearings on the proposed "Intelligence Identities Protection Act" before the Subcommittee on Legislation, the following requests were made of me:

Representative Ashbrook asked, as a drafting service, that we provide him with language for a "false identification" provision that would meet constitutional muster;

Representative Fowler asked for the Agency's official views on the Senate version of subsection 501(c) and the so-called "Kennedy Compromise" suggested in the closing days of the 96th Congress.

As to Representative Ashbrook's request, one such version is presently found in subsection 800(d) of H.R. 133, the "Intelligence Officer Identity Protection Act of 1981," introduced by Representative Charles E. Bennett (D., FL). Mr. Bennett's formulation contains a harm standard, that is, prejudice to the safety or well-being of any officer, employee, or citizen of the U.S. or adverse impact on the foreign affairs functions of the United States. The Bennett formulation provides a readily available solution. The formulation that appears in H.R. 133 is as follows:

"Whoever falsely asserts, publishes, or otherwise claims that any indiivdual is an officer or employee of a department or agency of the United States engaged in foreign intelligence or counterintelligence activities, where such assertion, publication, or claim prejudices the safety or well-being of any officer, employee, or citizen of the United States or adversely affects the foreign affairs functions of the United States, shall be imprisoned for not more than five years or fined not more than $50,000, or both."

In the course of the testimony by Richard K. Willard, the Attorney General's Counsel for Intelligence Policy stated that, in his opinion, a "false identification" provision containing a "life endangerment" element would be both enforceable and constitutional. I would stress, however, that such a physical harm standard would not be suitable for the sections of the Bill which cover correct identifications of intelligence personnel. The physical safety of our people is, of course, a matter of grave concern, but the Identities legislation is designed to deal primarily with the damage to our intelilgence capabilities which is caused by unauthorized disclosures of identities, whether or not a particular officer or source is physically jeopardized in each individual case.

As to the first question posed by Mr. Fowler, i.e., the Agency's views on the Senate's version of subsection 501(c), we start from the basic premise that H.R.

4 and S. 391 are essentially similar. Both are carefully and narrowly crafted Bills which could effectively remedy the problems posed by the unauthorized disclosures of intelligence identities, and withstand challenge on constitutional grounds. Thus, the CIA would support enactment of either H.R. 4 or S. 391. As you know, the Bills do differ with respect to the standard of proof that would apply to individuals who have not had atuhorized access to classified information, and which would criminalize their disclosures of identities even if these disclosures cannot be shown to have come from classified sources. This has been the most controversial part of Identities legislation, and it is also the key provision from the standpoint of the legislation's potential effectiveness in deterring unatuhorized disclosures. We have concluded that the objective standard of proof contained in S. 391 (i.e., "reason to believe that such activities would impair or impede . . .") is preferable to the subjective standard set forth in H.R. 4 (i.e., "with the intent to impair or impede . . ."). This preference is based upon a number of factors, including prospects for successful prosecutions under the differing formulations. We have discussed this matter at great length with the Department of Justice, and we believe that our preference for S. 391 is in accord with the Department's views.

Mr. Fowler's second question goes to the issue of the so-called "Kennedy Compromise," printed in the 30 September 1980 Congressional Record and set forth herein below:

"Whoever, in the course of a pattern of activities undertaken for the purpose of uncovering the identities of covert agents and exposing such identities (1) in order to impair or impede the effectiveness of covert agents or the activities in which they are engaged by the fact of such uncovering and exposure, or (2) with reckless disregard for the safety of covert agents discloses any information that identifies an individual not authorized to receive classified information, knowing that the informtaion disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15.000 or imprisoned not more than three years, or both."

This formulation appears to raise the same kinds of problems of proof of intent which the Department of Justice believes are present in the current formulation of the subsection 501(c) offense in H.R. 4, since the Government would have to show that the disclosure was made "in order to" impair or impede the effectiveness or covert agents or their activities. A defendant could assert that his activities and his disclosures were done "in order to" accomplish some other purpose. Inclusion of the alternative "reckless disregard" standard in any 501(c) type provision would be of doubtful value. It is difficult to understand what is meant by "reckless disregard" in the context of the Identities Bill, since Congress, by enacting Identities legislation is in effect making a finding that unauthorized disclosures of identities do in fact threaten the personal safety of intelligence personnel. A reckless disregard standard would apparently mean that the Government would have to make an additional showing of physical endangerment in each particular case. This, from a deterrent perspective, would appear to be inadvisable.

Additionally, the Committee may wish to consider one technical amendment to H.R. 4, not mentioned in the course of the recent Identities hearings, but nonetheless dictated by enactment in the 96th Congress of S. 1790, the "Privacy Protection Act of 1980," legislation signed into law by President Carter on 14 October 1980 and designed to modify the Supreme Court's decision in *Zurcher* v. *Stanford Daily*. The enactment of this legislation has a bearing on our efforts to secure passage of Identities legislation. The Identities legislation should include a provision amending subsections 101(a)(1) and 101(b)(1) of the Privacy Protection Act so as to include the proposed new title of the National Security Act of 1947 among the "receipt, possession, or communication" of national security information offenses with regard to which searches and seizures may be conducted under the exceptions provided in those subsections.

Should you have any questions concerning the views expressed in this letter, please do not hesitate to contact my Legislative Counsel directly. We look forward to working with the Committee to ensure prompt enactment of Identities legislation.

Sincerely,

WILLIAM J. CASEY.

Mr. FOWLER. I think—I am sure I speak for all my colleagues in stating that we want an effective bill. As Mr. Silver said, we want a bill that really works, and for a moment I want to discuss with you the nonclassified information section of the bill, the section that deals with publicly available information.

Mr. McMahon, I just cannot figure out how easy those sections are going to be to circumvent. For instance, the problem of foreign nationals in a country like Great Britain, how easy is it going to be for them to have access to the same publicly available information and have it get out?

I know you, like us, want mainstream reporting excluded, publicly held information.

Isn't there a real potential for circumvention in these cases?

Mr. McMahon?

Mr. MCMAHON. We think not, Mr. Fowler. We feel that the control that we have imposed on the executive branch's assisting us in our activities overseas will suffice that the foreign national cannot come upon the information easily, and that it is usually from people from within or people who have been associated with personnel who have been on the inside. So we are content that this bill will go a long way in providing the protection that we seek.

Mr. FOWLER. Mr. Rose raised the question, Mr. McMahon, that we also talked about a lot last year when we were dealing with this legislation, and that is the question of adequate cover provided by the Agency.

Just—I feel like I ought to give a disclaimer, that my questions do not necessarily reflect the view of the questioner. Just for purposes of discussion, what would your position be as an alternative to the publicly available information sections of the bill, which are controversial, if we did one or more of the following: No. 1, statutory authority for the withholding of the State Department's Biographic Register; No. 2, statutory authority for CIA agents to be provided with cover designations in any full time career U.S. Government position and/or a mandate to the new administration to take a close look at what is necessary and would be effective in this area, and then report back to the Congress?

Mr. CASEY. Mr. Chairman, I think the latter, I think we are going to get full cooperation in the availability of cover from the new administration. There are certain technical inhibitions related to the number of people that can be overseas, and I hope we can do something about that.

As to the nonpublication of the State Department Register and so on, it doesn't strike me that that would be terribly helpful. I think people would be around anyway, the information would somehow be available. So we would still need these more stringent penalties.

Mr. FOWLER. You made a strong statement, Mr. Director, which of course we appreciate. I just want to make sure that we are proceeding apace with the administration, with the proper oversight committees, that we are convinced that this approach in these controversial areas is unquestionably the best approach, and are you satisfied?

Mr. CASEY. Yes; I am. I think that I did say that I thought the administration, I am confident they will cooperate in providing cover,

but the kind of preparatory provision which is in the bill I think can only be helpful.

Mr. MAZZOLI. I'm sorry, the gentleman's time has expired.

The gentleman from Ohio, Mr. Ashbrook, you are recognized for 5 minutes.

Mr. ASHBROOK. Thank you, Mr. Chairman.

Sometimes when I listen to these hearings I think we lose sight of the type of people we are dealing with and the seriousness of the situation. I know in the CIA they are your friends and brothers out there, but for the rest of us, sometimes we don't realize the type of attacks they are getting.

My good friend from Massachusetts and I disagree on this particular area that I will ask a question about, but before I do, I just want the record to show some of the statements of the type of people we are dealing with because you have to put it in this perspective to see whether or not there is a clear and present need.

Talking about Richard Welch, who was shot down in front of his home in Athens, I have for the record—and I might ask unanimous consent later to put the entire statements in if somebody thinks I have taken them out of context—but in a press release of December 28, 1975, issued by the publishers of Counterspy, the Organizing Committee for the Fifth Estate justified that murder with the following quote, direct quotes, "it was a violent retribution for CIA exploitation and repression." And it went on to say, Mr. Casey—obviously you were not the Director at that time, but you are in the direct chain of command, so they are in effect attacking you or anyone like you—"If anyone is to blame for Mr. Welch's death, it is the CIA that sent him to Greece to spy and interfere in the affairs of the Greek people and a rendezvous with a death symbolic of the horrible essence of the CIA."

That's the type of people we are dealing with, the maliciousness, the total anti-American essence of everything they do. They did exactly the same thing in Jamaica. We had hearings. We have the pictures that they showed in their press conferences, the pictures of these poor, innocent people who were not CIA agents, and they endeavored to inflame the populace against them. Then logically what happened, some people go out and take a shot at these people in their homes.

I think it is in that context that I have to ask the question a little bit differently then I did of Mr. Wright. I look at it from that context. Maybe that is why I look upon it as so important that we protect those who are fraudulently identified as CIA agents. When we see people like that who are out there trying to damage you, your work, anybody associated with the CIA, indeed, any person in the Government who might even be within scatter shot range of what you are doing, John Ashbrook says at that point I think there should be a legislative remedy.

Now, that is my statement. I know you are not on record on this point one way or another, but what is specifically the position of the CIA in your administration, Mr. Casey, on the subject of the fraudulent identification of agents who are not in fact CIA agents?

Mr. CASEY. Well, I think that it would be more difficult to establish the intent, more difficult standards of proof. But I think in terms of the culpability, because this statute would apply only to those who

are engaged in a continuing pattern of events seeking to destroy American intelligence activities, I think it would be perfectly appropriate to apply it to those who throw a name around falsely as well as those who throw a name around accurately.

Now, I recognize the chairman's problem, if you were dealing with a particular labeling by any individual, but you are only dealing with people who are doing this in the course of a current pattern and continuing pattern of activity aimed at destroying American intelligence activities.

So I think it is perfectly appropriate and fair, and I think while the standard of proof may be more difficult, it would still be an added deterrent to this kind of activity, because indeed, I think that in the conduct of this activity, a lot of the names that have been thrown out are kind of guesses. I am not satisfied that it is all done responsibly. I haven't got actual proof, they don't always know that the people they are naming are working for CIA. I am sure they are throwing out names that they merely suspect, or have some rumor or reason to believe, and I think that that is as culpable in this context as throwing out the actual names.

Mr. ASHBROOK. Well, that is very encouraging, and I think you and I would share the common thought that whatever we might want to do, there still are difficulties of language, and therefore strictures that have been put there, rightly or wrongly, by the courts. Knowing that, and within those parameters, then, could I ask you——

Mr. MAZZOLI. I am sorry. The gentleman's time has expired.

Mr. ASHBROOK. Could I have 30 seconds to at least continue my question?

Mr. MAZZOLI. Yes.

Mr. ASHBROOK. Could I ask you to instruct your legal department to try to come up with language you think will meet a constitutional test in this particular area?

Mr. CASEY. Yes; we will consider that and submit it to you for the record.

Mr. ASHBROOK. Thank you.

Mr. MAZZOLI. Thank you.

The gentleman from Massachusetts.

Mr. BOLAND. I don't have any problem with John's statement, and I share his belief in his opinion of those who falsely accuse people working for the CIA, identifying those who work for the CIA or any of the agencies of the intelligence community. Again, the problem is whether or not that ought to be incorporated into this particular bill. You realize as well as I do that we have had problems with it, and one of those problems did center around the very question that you raise. It might very well be that in some other forum, in some other place, in some other bill we could take care of that problem. I think probably it ought to be taken care of, and I agree with you, the whole intent and purpose of those of Counterspy, the Covert Action Information Bulletin, their purpose and intent is to destroy the intelligence operations of the United States. They have said so. That is their credo. And that is what they are bent on doing, and that is the reason they are in business.

So my opinion of those individuals is precisely what yours is.

Let me ask, Mr. Casey, you have had a lot of experience in this area, in intelligence operations. You were one of the top people in the

Office of Strategic Services during World War II. Of course, that was—the climate is totally different today than it was in those days, so you never had the problem of the disclosure of CIA or intelligence operatives at that time, or people who were working for the OSS, isn't that correct?

Mr. CASEY. That is correct, not in the same context.

Mr. BOLAND. But we are living in a different era, in a different climate, and I suppose it is a lot easier to—it would be a lot easier to take care of problems during wartime where you have an emergency and a declaration of war, it would be a lot easier to take care of the problem that now is upon us. But as I have said, this is a different day and a different era.

Let me ask Dan Silver whether or not—the Director has listed those six elements which must be proved beyond a reasonable doubt—I won't repeat them. They are in the record—and that in a sense really establish a pattern of activities which are designed to expose and to identify intelligence personnel, and that if you are not engaged in that pattern of activities, then you would not be subject to the penalties that are imposed by 501(c).

Is that your belief?

Mr. SILVER. The statute does not use the phrase "pattern of activities" but I think it is implicit in the phrase which is used: "In the course of an effort to identify and expose", which is followed by covert agents in the plural, with the intent to impair or impede foreign intelligence activities, in the plural, and I believe the legislative history in the last session established that that was the committee's thought behind the form of language that is in here.

Mr. BOLAND. And that would be, it would seem to me—or would you believe that that is the kind of legislative intent that ought to be established?

Mr. SILVER. I think that that is as close as one can come to a bright line between the kind of activity that we are all trying to deal with, and on the other side, the activities of the responsible journalist or scholar. I believe that that is the reason that lies behind the attempt in both bills to put in the concept of pattern or course of conduct.

Mr. BOLAND. In your judgment, does the Senate bill require the same kind of governmental proof of the six elements that have been delineated here?

Mr. SILVER. Of course, the Senate bill differs significantly with respect to the intent element by having a so-called objective intent.

Mr. BOLAND. Would a violation be easier to prove under the Senate bill or the House bill?

Mr. SILVER. I would defer to the Justice Department on that. They are the prosecutors.

Mr. BOLAND. OK, thank you very much.

Mr. MAZZOLI. Thank you, Mr. Chairman.

The gentleman from Arizona.

Mr. STUMP. I have no questions, Mr. Chairman.

Mr. MAZZOLI. Thank you.

We have a vote, so we will have to adjourn for just a moment.

Mr. Casey, thank you very much, Mr. McMahon, Mr. Silver. We appreciate your attendance today.

There have been some questions asked for written response. There may be other questions that we didn't get to today that we will ask you to respond, and we will, as we have said before, work with expedition to report our bill, and we will be looking to work together to try to promote something to the statute books of this land.

Thank you very much.

The committee will stand adjourned for 10 minutes.

[A brief recess was taken.]

Mr. MAZZOLI. The committee will come to order.

Our last witness for today's session is Mr. Richard Willard, who is the Counsel to the Attorney General for intelligence policy, and this is, as you have heard earlier, sort of a day of firsts and last. Your colleagues in Government, Dan Silver and John McMahon, are moving to different activities, and you are joining us for the first time.

So we really want to welcome you. We want to wish you much success in your new activities downtown, and we look forward to receiving your statement today concerning this legislative activity.

And I will, without objection, have inserted as a full part of the record your statement. You are free to read it or talk about it, however you wish.

[The prepared statement of Richard K. Willard follows:]

STATEMENT OF RICHARD K. WILLARD, COUNSEL TO THE ATTORNEY GENERAL FOR INTELLIGENCE POLICY

Mr. Chairman and members of the Select Committee, it is a pleasure for me to appear before you today on behalf of the Attorney General to express the views of the Justice Department regarding H.R. 4, the House Committee's proposed Intelligence Identities Protection Act.

I would like to emphasize at the outset that the Justice Department strongly supports the enactment of legislation that would provide additional criminal penalties for the unauthorized disclosure of the identities of the clandestine intelligence officers, agents and sources who are the mainstay of this Nation's foreign intelligence and counterintelligence efforts. The national security of the United States depends to a substantial degree on the strength and vitality of our intelligence services. This strength and vitality is sapped, and the very lives of the individuals involved in these activities on behalf of the United States may be endangered, by their unauthorized identification to the media, the public and, as a natural consequence, to the intelligence and security services of our adversaries. We believe that additional legislation of this type would be vital in deterring and punishing those who would make such unauthorized disclosures.

It has been the position of the Department since discussion of such legislation began in earnest a few years ago, that the knowing disclosure of the classified identity of a clandestine officer, agent or source of a U.S. intelligence agency can constitute a violation of sections 793(d) and (e) of the existing espionage statutes included in Title 18 of the United States Code. Nonetheless, additional and more specific legislation would be invaluable in facilitating prosecutions of those who seek to neutralize such individuals by their exposure. Such legislation would clearly demonstrate the Government's concern for the welfare of these persons and, if carefully crafted, will enable the Government to avoid several difficult problems that are encountered in prosecutions pursued under the current espionage laws. For example, current law criminalizes attempts to communicate, deliver or transmit information relating to the national defense. It has never been clearly established that the publication of such information in a book, magazine or newspaper is activity of a nature meant to be included in this prohibition. While the Department has argued that publication is included, we agree it would be desirable for the Congress to resolve this issue, at least as regards the classified identities of clandestine intelligence personnel. The bill would also remove from the Government the burden of demonstrating in each case that the information disclosed is related to the national defense and could be used to the harm of the United States or the advantage of a foreign nation.

I would like to move now to address the provisions of H.R. 4, the bill now before this Committee after its introduction by Chairman Boland on behalf of himself and a number of other Representatives. The bill would prohibit the disclosure of information identifying a "covert agent"—a defined term covering a range of Government employees, agents, informants and sources. Varying penalties would be applied to three different categories of persons if they were involved in the unauthorized disclosure of such information.

The first category is described in section 501(a) of the bill and includes persons who have or have had authorized access to classified information that identifies covert agents. A person in this category who intentionally and knowingly identifies such an agent to a person not authorized to receive classified information would be subject to a maximum fine of $50,000, a prison term of up to ten years, or both.

The second category is described in section 501(b) and includes persons who learn the identities of covert agents as a result of having authorized access to any classified information. The information to which the person has access need not, as in the first category, specifically identify covert agents. However, it is necessary to prove that the identity is learned through the authorized access. A person in this category who knowingly and intentionally identifies such an agent to a person not authorized to receive classified information would be subject to a maximum fine of $25,000, a prison term of up to five years, or both.

These provisions will add substantial protections against disclosures by current and former Government employees and contractors who have been authorized to have access to classified information and the identities of covert agents in the course of their authorized access. The fact of such access lends an aura of credibility to disclosures by such persons and may provide them with a degree of expertise regarding how such identities are concealed and the means for piercing such concealment measures. Such persons, because they have occupied positions of special trust and have been provided access to such information by the Government, would be barred from making any disclosure to unauthorized persons of the identity of a covert agent, even when based merely on informed speculation or the analysis of publicly available information. The Department believes these restrictions are justified and sustainable.

We have one suggestion concerning these provisions. Neither section now includes a provision that would criminalize "attempts" to commit the proscribed actions. Such a provision would specifically authorize the Government to initiate a prosecution of any person within the terms of sections 501(a) or (b) who has taken a substantial step toward, but has not completed, the disclosure of the identities of covert agents. Such actions should be deterred and subject to punishment without forcing the Government to delay until the identities have actually been disclosed to the public.

The third and final category of persons covered by the bill is described in section 501(c) and includes persons who, in contrast to the first and second categories, have not had authorized access to classified information that identifies or results in learning the identities of covert agents. This provision would penalize a person in this category who engages in an effort to identify and expose covert agents with intent to impair or impede U.S. foreign intelligence activities and who knowingly discloses information identifying such an agent to a person not authorized to receive classified information in the course of such an effort with the intent to impair or impede U.S. foreign intelligence activities. Such action would be subject to a maximum fine of $15,000, a prison term of up to three years, or both. This section obviously has been the source of the most difficult issues presented by this bill since it would provide a criminal penalty for any person, including those who have never had authorized access to classified material, to disclose information identifying a covert agent even if it is derived from lawfully available public sources.

The nature of this provision extends it beyond the reach of the current espionage laws as they have been applied. As I have stated, those laws extend protection to information relating to the national defense. In the case of *U.S.* v. *Heine*, 151 F. 2d 813 (2d Cir. 1945), it was he'd that providing a foreign government with information accumulated from public sources did not constitute an offense under the espionage statutes even if accompanied by the requisite intent to injure the U.S. or provide advantage to a foreign power. That case was based, however, on the court's understanding of the specific statutory language in question and the legislative intent underlying its enactment. Certainly the language and history

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of the current proposed legislation will preclude any effort to limit its scope based upon the *Heine* precedent.

In any event, it has been argued that the principles of the First Amendment are done violence where the Government seeks to punish actions that are facilitated by information that is made available to the public in materials promulgated in some cases by the Government itself. We do not believe this argument has any merit. The First Amendment is not absolute, and we are confident that a carefully drafted bill such as H.R. 4 would be constitutional, based on Congressional findings of specific harm from the actions the statute is intended to prevent.

Although we believe section 501(c) is constitutional and enforceable as it is now drafted, we hope the Committee will consider some changes in wording to facilitate prosecuting cases that are likely to arise. It is our belief that the specific intent requirement stated in H.R. 4 not once, but twice, will intensify the practical evidentiary problem that we face in every criminal prosecution. The provision as now drafted requires proof of an effort to identify and expose covert agents with intent to impair or impede U.S. foreign intelligence activities and proof of a knowing disclosure of information identifying such agents, again with intent to impair or impede those activities. This means that in every case, unless the defendant has confessed to such a state of mind, serious jury questions may be raised on the issue of intent as to both the effort and the disclosure. In some situations, a defendant might try to confuse this issue further by claiming that the intent of a particular disclosure was not to impair legitimate intelligence activities but to expose the existence of intelligence activities that were believed to be improper or ill-advised and deserving of public debate or reform. Of course, we do not believe that the language or legislative history of H.R. 4 would authorize such a "good faith" defense. However, the specific intent requirement could serve to confuse the issues to the point where the Government could be unable to establish the requisite intent beyond a reasonable doubt in prosecutions brought under the statute.

The Senate counterpart to this bill, S. 391, alleviates these potential problems by requiring only that a defendant be shown to have had "reason to believe," rather than specific intent, that the disclosure would impair or impede U.S. intelligence activities. This objective standard is preferable to the Justice Department since it would relieve the difficult burden otherwise imposed on the Government to prove the defendant acted with an evil state of mind. This type of "reason to believe" standard has been found by the courts to be valid and has survived constitutionally-based charges of overbreadth and vagueness. See, e.g., *United States* v. *Bishop*, 555 F.2d 771 (10th Cir. 1977) ; *Schmeller* v. *United States*, 143 F.2d 544 (6th Cir. 1944). We believe this standard would be more easily applied and sustained by the courts.

Finally, there is no definition or explanation in the bill regarding the meaning of the term "foreign intelligence activities" as used in this section of the bill. It would be helpful to make clear, at least in the legislative history of the bill, that this term is intended to encompass both intelligence collection gathering functions and the conduct of covert operations.

Mr. Chairman, it is our belief that with these changes this bill will clearly strike a proper balance among the various competing interests. Legislation of this nature is critical to the morale and confidence of our intelligence officers and their sources. The Justice Department strongly recommends that it be reported out of this Committee with a favorable recommendation for enactment by this Congress.

I would be happy to address any questions you may have at this time.

STATEMENT OF RICHARD K. WILLARD, COUNSEL TO THE ATTORNEY GENERAL FOR INTELLIGENCE POLICY

Mr. WILLARD. Thank you, Mr. Chairman.

This is a first for me, also, to testify before any congressional committee, and I appreciate your courtesy in inviting me here today to represent the Attorney General. With your permission, I will discuss a few high points in my prepared testimony and go on to answer any questions you may have.

Mr. McCLORY. If the Chairman would yield, I would also like to express a warm welcome to Mr. Willard, and express apologies that they turned off the TV cameras just before you came to the microphone. This certainly does not mean that your testimony is not equally important to that which we have already received.

Mr. MAZZOLI. Thank you very much.

Mr. WILLARD. Thank you, sir.

Mr. MAZZOLI. Mr. Willard, you may proceed.

Mr. WILLARD. I would like to emphasize at the outset that the Justice Department strongly supports this legislation. The Majority Leader and Director Casey have eloquently spoken of the need for this legislation to protect the national defense and the very lives of the individuals involved in our clandestine intelligence services, and we think it is highly appropriate and necessary to provide additional criminal penalties for the——

Mr. MAZZOLI. Mr. Willard, would you hold for just a minute?

Would you close the door in the back, please? It is impossible to hear very well. And there is a lot of movement in the audience. There is a need for us to concentrate and for the witness to concentrate. Please close the door.

[Pause.]

Mr. MAZZOLI. You may proceed, Mr. Willard.

Mr. WILLARD. Thank you, Mr. Chairman.

As I was saying, we believe it is necessary and appropriate to provide additional criminal penalties for the unauthorized disclosure of the identities of covert intelligence agents. This legislation would demonstrate clearly the Government's concern for the welfare of these persons, and if carefully drafted, as is H.R. 4, it would enable the Government to resolve several difficult problems that are encountered in prosecutions under the espionage laws as they now stand.

I would like to address now the provisions of H.R. 4. The bill would prohibit the disclosure of information identifying a covert agent under varying circumstances. The first two categories of this bill have not been very controversial. These provisions would add substantial protection against disclosures by current or former Government employees and contractors who have been authorized to have access to classified information and the identities of covert agents in the course of their authorized access. The fact of such access lends an aura of credibility to disclosures by such persons and may provide them with a degree of expertise regarding how identities are concealed and the means for piercing such concealment measures.

The Department believes that these two sections of the bill are easily justified and sustainable.

We have one suggestion regarding these provisions. Neither section now includes a provision that would criminalize attempts to commit the proscribed actions. Such a provision would specifically authorize the Government to initiate a prosecution of any person within the terms of sections 501 (a) or (b) who has taken a substantial step toward but has not completed the disclosure of the identities of covert agents. Such action should be deterred and subject to punishment without forcing the Government to stay its hand until the identities have been actually disclosed to the public.

The third section, 501(c), has obviously been the source of the most difficult issues presented by the bill, and the greatest public controversy. This section provides a criminal penalty for any person, including those who have never had access to classified information, who disclose information identifying a covert agent, even if it is obtained from lawfully available public sources.

Now, it has been argued that the principles of the first amendment are done violence when the Government seeks to punish actions that are facilitated by information that is available to the public. We do not believe this argument has any merit. The first amendment is not the only provision in the Constitution. We are confident that a carefully drafted bill such as H.R. 4 is constitutional. Hearings in the last session of Congress and today's hearing have documented the serious harm to the national defense caused by actions of the type the statute is intended to prevent. We believe this serious harm justifies the proposed legislation and the extremely slight burden it imposes on individuals.

Although we believe section 501(c) is constitutional and enforceable as it is now drafted, we hope the committee will consider several changes in wording to facilitate prosecuting cases that are likely to arise. It is our belief that the specific intent requirement stated in H.R. 4 not once, but twice, will intensify the practical evidentiary problems that we face in every criminal prosecution. In some situations a defendant might try to confuse the issue of intent by claiming that his intent was not to impair legitimate intelligence activities, but to expose the existence of activities that were believed to be improper or ill-advised and deserving of public debate.

Of course, we do not believe that the language or legislative history of H.R. 4 would in fact authorize such a good faith defense. However, the specific intent requirement could serve to confuse the issues in an actual prosecution to the point where the Government could be unable to establish the requisite intent beyond a reasonable doubt.

The Senate counterpart to this bill, S. 391, alleviates these potential problems by requiring only that a defendant be shown to have had reason to believe, rather than specific intent, that the disclosure would impair or impede U.S. intelligence activities. This objective standard is preferable to the Justice Department since it would assist the prosecutorion in proving its case.

The "reason to believe" standard has been found by the courts to be valid and has survived constitutionally based charges of overbreadth and vagueness.

Mr. Chairman, it is our belief that with these changes this bill will clearly strike a proper balance among the various competing interests. Legislation of this nature is critical to the morale and confidence of our intelligence officers and their sources. The Justice Department strongly recommends that it be reported out of this committee with a favorable recommendation for enactment by Congress.

I would be happy to address any questions you may have at this time.

Mr. MAZZOLI. Thank you very much, Mr. Willard.

I yield myself 5 minutes to make some inquiries.

One is, as a representative from the Justice Department, are you prepared to state whether the new Attorney General and the continuing Director of the FBI feel that the FBI should be included in the coverage of a bill?

Mr. WILLARD. Yes, sir. We feel that FBI agents involved in foreign intelligence or counterintelligence activities should continue to be covered under the terms of H.R. 4.

Mr. MAZZOLI. That would be both for the FBI, as we call them, agents, who would be the FBI employee, as well as their assets, that is, their contacts in the specific areas of foreign counterterrorism and foreign counterintelligence, is that correct?

Mr. WILLARD. Yes, Mr. Chairman.

Mr. MAZZOLI. Thank you.

Mr. Willard, let me ask you, as an expert in this area, do you believe that the current laws on the books, espionage laws, are adequate to deal with the problem that we have had outlined to us today and that we have had presented to us for the last several years?

Mr. WILLARD. Mr. Chairman, the Justice Department has traditionally believed that certain of these activities could be prosecuted under the present statutes. However, we think that a bill such as H.R. 4 would materially assist a prosecution by eliminating several practical problems that arise in these sorts of cases.

Mr. MAZZOLI. I understand.

You say that you would prefer that the bill include attempts.

Does the Senate bill include attempts, and if not, do you have any language or would be able to submit language to us that you think would cover the problem of efforts which are not availing?

Mr. WILLARD. Yes, Mr. Chairman. We would be happy to submit language to the committee for your consideration. I do not beileve the Senate bill now includes such provisions.

Mr. MAZZOLI. You were here, sir, when the questions were raised by the gentleman from Ohio and our chairman on false identification.

Have you had a chance to examine that issue, and would you feel prepared to address it today as to whether the bill or any bill should include some factor or should it be silent as to false identification?

Mr. WILLARD. Mr. Chairman, we feel that a provision of this nature would be constitutional and enforceable, and would certainly allow for prosecution under circumstances that would not be covered by H.R. 4 as it is now drafted. As I understand it, such a provision would make it unlawful to disclose, whether falsely or truthfully, the identity of an agent under circumstances that would place that person's life in danger. We think that is within the time-honored traditions of criminal law, and if the committee saw fit to include such a provision, we think it would cause no problem, either from the standpoint of enforcement or constitutionality.

Mr. MAZZOLI. As you said, we have limited most of the discussion here to 501(c) because it is only in those categories that we really have a great deal of dispute, the first two categories being breaches of trust. It is only in the latter category that there are problems.

Do you believe that the standard which you would advance, which is the reason to believe that danger or harm would ensure from a

divulgence of these names, is the kind which would survive constitutional scrutiny and examination?

Mr. WILLARD. Yes; Mr. Chairman. I would point out that the Senate version of this provision includes many elements, as does the House version, in addition to the question of a reason to believe or intent to impair or impede intelligence activities. We believe that, because of the multiple elements of an offense as stated in either version, such legislation would pass muster in terms of both due process and first amendment constitutionality.

Mr. MAZZOLI. Thank you. I appreciate it.

My time has expired.

The gentleman from Illinois is recognized for 5 minutes.

Mr. MCCLORY. Thank you, Mr. Chairman.

I appreciate your comments with regard to attempts or unfulfilled efforts to disclose the identities of agents which might occur and which are not covered in this legislation.

Would that be an activity such as that of a person employed in the CIA who might funnel out information which he or she might have expected would be exposed, but it never ultimately was exposed, and there was no publication to identify the agent? Would that be the type of attempt that you would have in mind?

Mr. WILLARD. Yes, sir, that would be one category. Another example would be an agent who calls a press conference and announces that he is going to disclose 25 secret agent identities. If the elements of attempt were satisfied, he could be prosecuted without having to sit back and wait for the actual disclosure of the names as would be required to complete the actual offense now described in the bill.

Mr. MCCLORY. Now, you were aware of, and I think you pointed out the differences between, the Senate and the House bill. You may have heard my earlier questions with respect to the Senate bill in that it might involve the graymail problems to a greater extent and thus possibly impede prosecutions where it was decided that the prosecution just doesn't care to comply with the request of such a defendant to reveal classified information, even to the court in camera.

Do you feel that that is a serious disability as far as prosecution of a case under the identities of agents bill, or do you think that is easy to get around?

Mr. WILLARD. Mr. McClory, we feel that situation has been substantially improved by the passage in the last Congress of the Classified Information Procedures Act. We think that statute will be very helpful in alleviating some of these problems.

I have compared the two versions of the identities bill to determine which would present a greater graymail problem, and it seems to me to be a matter of opinion at this point. The prosecutors in the Criminal Division with whom I have discussed this question believe problems could arise in either case and that, as a practical matter, a defendant in a prosecution will seek to expose classified information as a defense tactic whenever such a tactic benefits the defense.

Mr. MCCLORY. It has been suggested that we might include both tests so that the person would be guilty under the act if he or she had reason to believe, or if he or she intended to impede or impair our intelligence activities.

Do you have any view on including both alternative tests in the legislation?

Mr. WILLARD. We would have no problem with that approach. I would mention that many criminal statutes have alternative tests of *mens rea*, and it would certainly be appropriate for this committee to consider including the two standards. Of course it is difficult to predict which standard would turn out to be the best one in a particular prosecution. We can envision circumstances where one would be better, and circumstances where the other would be. But including both standards would be helpful.

Mr. MCCLORY. It is my understanding from your statement to the chairman that you will furnish the committee or the committee staff with suggested amendments that you think would meet the rather relatively detailed objections or questions that you have raised with regard to this legislation.

Mr. WILLARD. Yes, sir, we will do that.

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you. The gentleman's time has expired.

The gentleman from Georgia, Mr. Fowler.

Mr. FOWLER. I thank the gentleman.

Mr. Willard, is my understanding—do I glean from your testimony that you prefer the Senate language as a substitute for our 501(c)?

Mr. WILLARD. Yes, Mr. Fowler, we have some preference for that version.

Mr. FOWLER. Have you also looked at the proposed, what is called—the so-called proposed Kennedy compromise language?

Mr. WILLARD. I know that it exists, but I don't have it in front of me and have not studied it carefully.

Mr. FOWLER. Would you take a look at that and give us in writing as soon as practical your opinion of that as sort of a third alternative to it? I would appreciate that.

Mr. WILLARD. Yes, sir, we will do that.

[The information referred to follows:]

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF INTELLIGENCE POLICY AND REVIEW,
Washington, D.C., May 8, 1981.

Hon. ROMANO L. MAZZOLI,
Chairman, Subcommittee on Legislation, Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: When I testified before the Subcommittee on April 7, 1981 concerning H.R. 4, I was asked to provide further information in response to various questions raised by you and other members of the Subcommittee. This letter contains my responses on behalf of the Department. The references are to the relevant pages of the transcript, which I also have corrected and enclose for your use.

I. (PAGES 66, 70, 81–82)

You and Congressman McClory requested that I provide the Subcommittee with proposed amendments to H.R. 4 that would accomplish the changes I suggested in my testimony. These included: (a) replacing the specific intent standard in section 501(c) with an objective intent standard; (b) adding an attempt provision to sections 501 (a) and (b); and (c) including a definition of "foreign intelligence activities" in the legislative history pertaining to section 501(c).

(a) Intent standard

The first suggestion could be accomplished by adopting language similar to that in section 601(c) of S. 391 (97th Congress). Section 501(c) would then provide as follows:

Whoever, in the course of an effort intended to identify and expose covert agents and with *reason to believe* that such activities would impair or impede

the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both. (Modified language in italic.)

This revision would permit prosecution of an individual who discloses information with knowledge that it identifies a covert agent, while engaging in an effort intended to disclose such identities, when all the surrounding facts and circumstances would lead any reasonable person to believe that such activities would impair or impede the foreign intelligence activities of the United States. This section also requires that an individual specifically intend to engage in an effort to identify and expose the identities of covert agents with knowledge that the identities are classified and being protected by the U.S. Government.

The "reason to believe" standard would permit prosecution of an individual who can be shown either to have known of and disregarded the risk of harm or to have been negligent in overlooking the evident consequences of his actions for U.S. foreign intelligence activities. In view of the specific intent and knowledge elements contained elsewhere in section 501(c), we believe this objective intent standard would be sustained by the courts and would permit a more effective prosecution of the type of harmful disclosures that concern this Committee.

(*b*) *Attempt provision*

An attempt provision can be added to sections 501 (a) and (b) by simply inserting the phrase "or attempts to disclose" after the term "discloses" in both sections. A lesser penalty for attempts can be included by inserting the phrase "and for an attempt, shall be fined not more than $15,000 or imprisoned not more than three years or both" at the end of each section.

At the April 7 hearing, the suggestion that an "attempt" provision be added to sections 501 (a) and (b) was questioned by several members of the Subcommittee. Specifically, Congressmen McClory and Fowler requested that we study this matter further and provide examples of situations in which an attempt provision would apply. It should be remembered that we have suggested adding an "attempt" provision only to the two sections involving government employees or contractors who have occupied positions of special trust and who have been provided access to classified information in the course of their official duties. The mere fortuity that a disclosure by these persons in somehow aborted does not, to my mind, eliminate their culpability. Of course, the criminal law of attempts punishes only a person who has taken a substantial step toward commission of the crime and whose activities reflect an intent to carry out the proscribed action.

The type of conduct required to prove an attempted disclosure will vary with the circumstances of a particular case. Certainly, where an employee having access to classified information that identifies a covert agent mails or delivers a list of covert agents to a person believed to be an unauthorized person, and that person turns out to be an undercover agent of the U.S. Government, a jury could conclude that a substantial step toward fulfillment of the crime had been undertaken by the defendant. Also, such a substantial step could be evidenced by the convening of a press conference with the stated purpose of disclosing covert agents' identities. In this case, a jury would be required to consider all the circumstances surrounding the defendant's action (e.g., Did he have a written list at the podium? Had he told other "authorized" persons the substance of his planned remarks?) to determine if his actions sufficiently evidenced a design unlawfully to disclose the classified identities of covert agents.

Attempt provisions are by no means uncommon in the criminal code. Significantly, the two espionage statute provisions which the Department of Justice contends apply to the unauthorized disclosure of covert agents' identities, 18 U.S.C. § 793 (d) and (e) contain attempt provisions. See also 18 U.S.C. § 794 (gathering or delivering defense information to aid a foreign government); Proposed Criminal Code, S. 1722, 96th Cong., 1st Sess., § 1001 (1980) (setting forth a general criminal attempt provision). Such provisions also are contained in numerous other criminal statutes. E.g., 18 U.S.C. §§ 32 (destruction of aircraft or aircraft facilities), 33 (destruction of motor vehicles or motor vehicle facilities),

224 (bribery in sporting contests), 231(a)(3) (civil disorders), 245(b) (interference with federally protected activities). We believe an attempt provision is justified for inclusion in sections 501 (a) and (b) and would be sustained by the courts in proper cases.

(c) *Definition of foreign intelligence activities*

The third suggestion was to include in the legislative history pertaining to section 501(e) a definition or description of the term "foreign intelligence activities". The following language would satisfy our concern:

The term "foreign intelligence activities" as used in § 601(c) of the bill is intended to include the collection of foreign intelligence, foreign counterintelligence, and foreign activities (covert action); and support for these activities. However, activities conducted solely for civil or criminal law enforcement purposes within the United States are not included.

If the Subcommittee deems it necessary or advisable, additional language concerning the meaning of the terms "foreign intelligence," "counterintelligence," and "special activity" could be added modeled upon the definitions now in Executive Order 12036. We see no compelling need to do this, however, and not doing so would provide additional flexibility as the meaning of these terms may shift slightly over time.

II. (PAGES 72–73, 74)

Congressmen McClory and Fowler inquired whether there was a real need to include protection for FBI agents, sources and informants and whether an FBI covert agent had been identified in the recent past in connection with a disclosure in Chicago. According to the FBI, the identity of an FBI double agent who had been involved in an investigation of the activities of the Polish Intelligence Service in the Chicago area was disclosed when a sealed court record in a Freedom of Information Act case on appeal to the Seventh Circuit was leaked. However, the FBI has been unable to discover who leaked the court records or for what reason.

As you requested during the hearing, I have asked Director Webster to communicate directly to this Subcommittee the views of the FBI concerning whether this legislation should continue to include the Bureau.

III. (PAGE 71)

Congressman Fowler requested the Department's opinion of the so-called "Kennedy compromise" to replace the current section 501(c). That proposal states:

"(c) Whoever, in the course of a pattern of activities undertaken for the purpose of uncovering the identities of covert agents and exposing such identities (1) in order to impair or impede the effectiveness of covert agents or the activities in which they are engaged by the fact of such uncovering and exposure, or (2) with reckless disregard for the safety of covert agents discloses any information that identifiies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

Subsection (c)(1) of this proposal would criminalize the disclosure of a covert agent's identity only if done in the course of a pattern of activities undertaken for the specific and deliberate purpose of compromising particular covert agents or their operations in a foreign country. Especially in conjunction with the proposed legislative history for this subsection, this constitutes a specific intent standard that could be interpreted very narrowly. 126 Cong. Rec. S13,839 (daily ed. Sept. 30, 1980). For example, it would not penalize a person who willfully engages in a pattern of activities to disclose covert identities and knows that the exposed agents and their operations will be rendered ineffective by his disclosure, so long as his underlying purpose is to stimulate congressional or public review of their activities. The damage to the U.S. and the potential harm to those identified under such circumstances is still significant, however. Moreover, the Kennedy language would invite potential defendants to assert an "underlying purpose" of reforming U.S. policy in every case and thus frustrate enforcement of the statute.

As I testified at the Subcommittee hearing, we believe an objective intent standard, rather than a specific intent standard, is preferable to facilitate prosecutions of the harmful disclosures identified by this Subcommittee. The Kennedy compromise, especially with its descriptive legislative history, unacceptably narrows the scope of persons subject to prosecution and provides a potential safe haven for those who engage in these activities.

We have much less difficulty with subsection (c)(2) of the Kennedy compromise, although we believe it does not go far enough. It would permit prosecution of individuals who engage in a pattern of activities to expose covert agents and makes such disclosures with reckless disregard for their safety. This subsection is not, however, sufficiently broad in that it would not apply to disclosures by persons who should reasonably have foreseen that their disclosures would lead to harm for either the covert agents or the intelligence operations in which they are involved. As stated earlier, we believe that a "reason to believe" standard is more appropriate to be included in this legislation.

I trust this additional information will be useful to the Subcommittee as it deliberates further the provisions of H.R. 4.

Very truly yours,

RICHARD K. WILLARD,
Counsel for Intelligence Policy,
Office of Intelligence Policy and Review.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., May 8, 1981.

Hon. ROMANO L. MAZZOLI,
Chairman, Legislation Subcommittee,
Permanent Select Committee on Intelligence,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN MAZZOLI. I am writing in response to your request for the views of the FBI on H.R. 4, the Intelligence Identities Protection Act, which was made during the testimony of Richard K. Willard, Counsel for Intelligence Policy, U.S. Department of Justice, at the time of his recent appearance before the House Permanent Select Committe on Intelligence.

It is my opinion that there are compelling arguments for the continued inclusion in the bill of provisions affording protection to FBI agents and assets who are acting covertly for the Government in foreign counterintelligence and international terrorism matters. In my view, this legislation seeks to address two separate problems which result from the disclosure of the identity of a covert intelligence agent: physical harm to the individual exposed and disruption of intelligence activities attendant to such a disclosure.

With respect to the potential for physical harm to exposed covert agents and assets, some have argued that within the United States the ability to protect an individual is greater than abroad. I agree that this is likely the case, but the argument fails to note that our covert intelligence personnel do operate abroad as the occasion demands and some of those who do not are working on our behalf within violence-prone groups, particularly in the international terrorist field. The potential for harm while perhaps diminished within the United States is not by any means eliminated and I believe covert intelligence personnel acting on behalf of any intelligence agency of the United States deserve the protection afforded by this legislation regardless of the locale of their activities.

Often overlooked in the discussions of this proposal is the damage to the sensitive intelligence operations of our Government which would result from any exposure of covert intelligence personnel. There is no doubt that current intelligence activities would be jeopardized and it is also true that through detailed analysis foreign intelligence services would also be able to assess our past covert operations where they involved the exposed agent or asset. This possibility presents, in my view, a great threat to the continued success of U.S. intelligence activities.

I urge the Committee's favorable consideration of this proposed legislation.

Sincerely yours,

WILLIAM H. WEBSTER, *Director.*

Mr. FOWLER. I know you have had to cover a lot of ground in a hurry in your new responsibilities. You may not know the answer to this, but I am sure one of you—I don't know of any, in my 4 or 5 years on the committee, but do you know whether or not there has ever been a correct identification of an FBI agent or informant under circumstances that would be covered by this bill?

Mr. WILLARD. We are not aware that there has been such an identification in the recent past.

Mr. FOWLER. Well, if that is true, should we cloud the debate on this particular measure, which is designed primarily in response to a real threat against CIA officers, by including the FBI?

Mr. WILLARD. Well, the fact that someone has not successfully exposed an FBI agent does not mean that there is no threat that this could occur. We know, for example, that people have used the Freedom of Information Act to try to determine FBI informants' identities in a law enforcement context.

Mr. MCCLORY. Would the gentleman yield for this observation?

Mr. FOWLER. I would be delighted to yield.

Mr. WILLARD. Well, we think that FBI cover arrangements have been identified in connection with some disclosures in Chicago. The name of our colleague Mr. Rostenkowski was involved in that exposé or that investigation of Polish subversive activities in the Chicago area. And I just suggest that we might check on that to see whether or not there isn't such a case.

Mr. WILLARD. We will be happy to look into that situation.

Mr. FOWLER. Let me ask it in another way.

In regard to section 501(c), in your opinion, that of the Justice Department, is it even possible to correctly identify an FBI agent from available sources?

Mr. WILLARD. Well, we think that FBI cover arrangements have been effective in the past and hope they will continue to be in the future. It may well be that penetrating those arrangements is not possible presently. We do think, though, that FBI covert agents are involved in activities that are often dangerous and that they deserve to have the protection of this kind of legislation. Thus, we believe they should be covered when engaged in intelligence or counterterrorism activities.

Mr. FOWER. Well, I just want to be careful that we don't obscure—I would appreciate your closely looking into that question, Mr. Willard, because I want to make sure that we target the need.

Mr. MAZZOLI. Would the gentleman yield?

Mr. FOWLER. In the words of the country, you know, if the clock ain't broken, I ain't sure we ought to fix it.

Mr. MAZZOLI. If the gentleman would yield.

Mr. FOWLER. I yield to my chairman.

Mr. MAZZOLI. I think he is exactly right.

Perhaps, Mr. Willard, you could convey a message to Judge Webster from us that perhaps it would be—if there were a letter or some statement that could be prepared to the point which would in a sense refresh what he has already said last year of the need for the FBI coverage, it would be useful as we are trying to bring our information again up to date and to make it completely timely.

Mr. WILLARD. Yes, Mr. Chairman, we will be happy to respond to that request.

Mr. MAZZOLI. Thank you.

Mr. FOWLER. Again, I got you—I was following along on your statement, listening very carefully, but the Xerox machine broke down and I didn't have page 7. So let me ask you to again help get my thinking right on what you are proposing.

You are proposing language which would include attempts to reveal the names of agents, or taking, I think you said, a substantial step toward.

Is that correct, and would you elaborate on that a bit? How do we prove that?

Mr. WILLARD. Well, what we proposed was to include an attempts provision for 501(a) and 501(b), not 501(c). As we understand, 501 (a) and (b) are not particularly controversial. We don't propose complicating 501(c) by proposing an attempt provision for that section.

Mr. FOWLER. Well, would that not make 501 (a) and (b) very controversial if you had to prove what a substantial step toward meant? I mean, is the call of a press conference, to use the example you gave, the call or the setting of a press conference, is that a substantial step toward revelation, in your opinion, to use your example?

Mr. WILLARD. I believe it would be. However, you would also have to have proof of specific intent to commit the crime under an attempt provision. We now have attempts provisions for most criminal laws, and since 501 (a) and (b) are viewed as being noncontroversial criminal statutes, we see no reason why adding an attempt provision would make them any more controversial.

Mr. FOWLER. You see no reason under criminal law that adding an attempt codicile to 501 (a) and (b) would in any way jeopardize their constitutionality. Is that what you are saying?

Mr. WILLARD. No, sir, we do not.

Mr. FOWLER. That's all I have for the moment.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Massachusetts.

Mr. BOLAND. Mr. Willard, I appreciate your statement. I think it is a fine statement of position on the part of the Department of Justice. Let me ask just a couple of questions.

In *Gorin* v. *United States*, though the espionage statute involved did contain a standard of intent or reason to believe, the Supreme Court stated, "This requires those prosecuted to have acted in bad faith."

Is the bad faith requirement satisfied if one acts with a reason to believe that foreign intelligence activities will be impeded or impaired, but with the intention of exposing wrongdoing?

Mr. WILLARD. Yes, Mr. Chairman, I believe it would be satisfied. *Gorin* involved statutory construction. The legislation now under consideration by this committee is different legislation with a different legislative history and purpose, and the test enunciated in *Gorin* would not necessarily be applied by the courts in interpreting this legislation.

Mr. BOLAND. You used the phrase in your statement—and I have seen it in many other statements, it has been bandied about—the first amendment is not absolute.

What are you saying?

Mr. WILLARD. What we are saying is that the interest of the country in its defense is also constitutionally-based and can be considered in

determining whether or not the first amendment is violated. To say that this legislation would have some effect on speech, which it obviously does, does not answer the question of whether or not it is constitutional.

Mr. BOLAND. And I asked the question of Mr. Silver, and he deferred to you, with respect to the elements of proof that would be required in a prosecution under subsection 501(c), and the six elements of proof are detailed, they have been detailed often for the record, and they are detailed in Mr. Casey's statement, would those elements of proof be required in the Senate bill, too?

Mr. WILLARD. Yes, Mr. Chairman. The only major difference is that the Senate bill uses the reason to believe standard while the House bill relies upon a specific intent standard.

I might say that what the Senate bill does is to take the two specific intent requirements of the House bill and replace them with one specific intent requirement and one reason to believe requirement. In that sense the bills are very similar, and their real differences are reduced to only one of the state of mind elements.

Mr. BOLAND. Is the bottom line that it would be easier to prosecute under the Senate bill, and the evidentiary proof would be less under the Senate bill than it would be under the House bill?

Mr. WILLARD. That, Mr. Chairman, is our judgment as to most cases. We certainly recognize that in a particular situation it might be easier to prosecute under the House bill. We have talked with our prosecutors and, based on their advice, concluded that on balance it would be easier to prosecute under the Senate bill.

Mr. BOLAND. As you know, there is a considerable split of opinion over whether or not 501(c) is constitutional. There are some distinguished, very distinguished constitutional lawyers who say that it is. There are others who say that it is not. I guess probably the final forum would be the Supreme Court, if this bill is passed, to determine the constitutionality. I am sure that it would be raised and would come to that particular point in time, too, wouldn't you think so?

Mr. WILLARD. I agree, Mr. Chairman. There is a good chance that this bill might end up in the Supreme Court. I might add that I feel confident that either version would be sustained by the Supreme Court if tested on constitutional grounds.

Mr. BOLAND. Thank you, very much.

Mr. MAZZOLI. Thank you very much, Mr. Chairman.

Mr. FOWLER. Could I continue for a moment?

Mr. MAZZOLI. Certainly.

Mr. FOWLER. Mr. Willard, again we have got to go back—you know, we did all this last year, so you have introduced a whole new element for me that I—I am back here reading, which is dangerous I know, section 501 (a) and (b) and trying to conceptualize what you are recommending about this attempt to disclose.

Now, I can conceptualize as an old two-bit lawyer, an attempt to commit murder, an attempt to commit rape, but I am having trouble conceptualizing an attempt to make a revelation, an attempt to speak. You know, until somebody speaks, we don't know what they are going to say, and in both section (a) and (b), we have—those are the sections, as you well know, these are people that have had access

to classified information, so we are assuming that they are one of us, No. 1. Second, we have got not only the attempt to disclose but intentionally disclosing. I think there are two different standards in there that are needed to protect, and I just can't figure out how in the world we would ever prove on the basis of your example or many others how we would show an attempt to reveal, or substantial step toward a revelation under 501(a).

Mr. WILLARD. Well, I think the example Mr. McClory gave might illustrate the most realistic possibility. I can foresee a situation where our counterintelligence officers were able to detect a forthcoming disclosure by a renegade agent and intercept it. Now, those counterintelligence officers might well be authorized to receive classified information. Thus, if the renegade agent gave someone who was actually one of our counterintelligence officers a list of names, that would not be a violation of the bill as it is now drafted because the recipient would in fact be authorized to receive the information. But the renegade agent would have intended fully to disclose those names. It would have been only good counterintelligence work that prevented the crime of disclosure from being completed under the terms of the statute.

Mr. FOWLER. Now, wait a minute. But that is not an attempt to disclose to one not authorized to receive it, is it?

Mr. WILLARD. I think that is the type of situation where an attempt provision could be useful. Otherwise it would not be a violation of the statute.

Mr. FOWLER. Well, I don't think—what I would like for you to do, what I would like to ask you to do is simply to look at that again, if that is what you are asking us to do.

Mr. MCCLORY. Would the gentleman yield?

Mr. FOWLER. I will in just a second, Bob, thank you.

And especially, again, we are in this area of speech. The chairman has raised some of those questions. I just want to make sure that we are clear on what we are trying to protect, No. 1, before we legislate, and second, that we are not buying far more problems in a worthy attempt to cover every possibility, but by doing, to cloud the real problems that have arisen.

Mr. WILLARD. Well, I agree, Mr. Fowler. I think that the bill, as it is presently drafted, is a good one, and the Justice Department does not want to do anything to endanger its speedy passage, and I think that is a judgment your committee will have to make.

Mr. FOWLER. Well, just check for some hidden torpedoes in your proposal. We look forward to hearing from you.

Mr. MAZZOLI. Bob, 5 minutes.

Mr. FOWLER. I yield.

Mr. MCCLORY. Well, thank you.

I think you make an important suggestion or contribution to this legislation by suggesting that perhaps an unfulfilled public identification of an agent operating under cover should nevertheless be covered by the statute, just as you have indicated that with regard to other types of criminal activity, that the attempt to commit such activity is generally covered as well.

I am thinking now, for instance—and I don't know what the CIA has in its most secret vaults, but if there is a document there which

would contain the names and identities and addresses of every agent who is operating under cover, including perhaps foreign nationals who are extremely important to our national security interests, or if there is possibly the information in an encrypted form, which would be useful if purloined and marketed or disclosed abroad if the attempt was fulfilled by resulting in the identification of agents operating under cover, it would seem to me that those kinds of activities, which I assume we have to anticipate in connection with this legislation, should be covered.

Are those possible actions which could occur?

Mr. WILLARD. Yes; Mr. McClory, and I appreciate your suggestions. Obviously the members of this committee have lived with this legislation a lot longer than I have. Last year I was in private practice and you were conducting hearings on this bill. I think you probably are in a better position to come up with examples of this kind than I am.

But as I told Mr. Fowler, we will look into this matter further and will try to provide the committee with more information in support of our suggestion.

Mr. MCCLORY. I assume that what we are talking about really only relates to section 501(a) and 501(b) essentially.

Mr. WILLARD. Yes, sir.

Mr. MCCLORY. And it would also then, of course, require a more modest penalty for attempts to commit crimes under 501(a) or 501(b) than the penalties that are there for the full commission of the act.

Mr. WILLARD. I think that would be appropriate.

Mr. MCCLORY. Thank you.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. Chairman.

Mr. Willard, thank you very much for your help today.

Of course, you have already received certain requests for information. Because of the need to move this along, we yould appreciate your handling those requests as speedily as you can.

Mr. WILLARD. Yes, Mr. Chairman, we will.

Mr. MAZZOLI. Thank you very much.

The subcommittee will meet again tomorrow morning at 9 o'clock.

Thank you.

The committee stands adjourned.

[Whereupon, at 3:12 p.m., the subcommittee recessed, to reconvene at 9 o'clock a.m., Wednesday, April 8, 1981.]

H.R. 4, THE INTELLIGENCE IDENTITIES PROTECTION ACT

WEDNESDAY, APRIL 8, 1981

U.S. HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
SUBCOMMITTEE ON LEGISLATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:01 a.m., in room H-405, the Capitol, Hon. Romano Mazzoli, chairman of the subcommittee, presiding.

Present: Representatives Mazzoli (presiding), Fowler, Hamilton, Boland (chairman of the committee), McClory, and Robinson.

Also present: Thomas K. Latimer, staff directors; Michael J. O'Neil, chief counsel; and Bernard Raimo, Jr., and Ira H. Goldman, counsel; Herbert Romerstein, professional staff member; and Louise Dreuth, secretary.

Mr. MAZZOLI. The subcommittee will come to order.

This morning the Subcommittee on Legislation resumes its hearings on H.R. 4, the Intelligence Identities Protection Act.

Our first witness this morning is John Warner, former General Counsel of the Central Intelligence Agency. Mr. Warner is now engaged in the private practice of law. He appears before us, as he has frequently in the past, as Counsel to the Association of Former Intelligence Officers.

We are now delighted to welcome him, and Mr. Warner is accompanied this morning by Mr. John Greaney, formerly the Associate General Counsel at CIA, and now the Executive Director of the Association of Former Intelligence Officers.

Mr. Warner and Mr. Greaney, we welcome you.

Your statements will be made a part of the record, and you may talk from them or however you wish to proceed.

[The prepared statement of Mr. John S. Warner follows:]

STATEMENT OF JOHN S. WARNER, ESQ., LEGAL ADVISOR TO THE ASSOCIATION OF FORMER INTELLIGENCE OFFICERS AND FORMER GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY, ACCOMPANIED BY JOHN K. GREANEY, EXECUTIVE DIRECTOR, ASSOCIATION OF FORMER INTELLIGENCE OFFICERS

Mr. WARNER. Thank you, Mr. Chairman.

No. 1, we do appreciate the opportunity of being here. Mr. Maury, our president, is out of town. He hopes to join us in a few minutes. But again, we do appreciate the opportunity to speak to this legislation because we regard it as very important.

I will not read the statement. It will be in the record. I would like to summarize a few of the points in it which I feel need highlighting.

Since your committee first initiated this legislation well over 2 years ago, we have watched it very carefully and worked with your staff and testified to it. We testified on January 30, 1980, and I will not repeat that testimony, but would like to have it included in the record, and I offer a copy here.

Mr. MAZZOLI. Without objection, that statement will be made a part of the record.

Mr. WARNER. Thank you, sir.

[The information referred to follows:]

STATEMENT OF JOHN F. BLAKE, PRESIDENT, ASSOCIATION OF FORMER INTELLIGENCE OFFICERS

Mr. Chairman and Members of the Committee. I wish to thank you for requesting me to appear before this Committee on behalf of the Association of Former Intelligence Officers (AFIO) to give our views on HR 5615, the "Intelligence Identities Protection Act." I note that this bill is sponsored by all of the members of the House Permanent Select Committee on Intelligence.

We in AFIO fully support this bill and urge early Committee action looking toward enactment into law. The need for this legislation is clear and compelling—it is appalling that the names of confidential employees, agents and informants of our intelligence services can be spread about or published with impunity. There must be a law to deter those who would disclose those identities. Not only is the safety and well-being of such employees and agents put in jeopardy but there is significant harm to on-going intelligence activities.

In the aftermath of excessive charges and the many ill-founded allegations of the mid-70's, this legislation is a concrete step to enhance the effectiveness of intelligence. Against the back-drop of world events, positive action will be seen as well-timed. Furthermore, the men and women engaged in intelligence activities will see this as a positive effort to protect them in their daily work and the resulting boost in morale will be immeasurable.

Many times, legislative objectives are shared, but the proposals when drafted caused difficulties. We recognize the considerable effort and care which have gone into the specific wording of H.R. 5615. We wish to express our appreciation to the Subcommittee on Legislation. Mr. Murphy, which sent to AFIO in March of last year preliminary drafts dealing with the subject matter of H.R. 5615 and requested our critical appraisal. Prior to forwarding our written comments, AFIO representatives met with your staff for candid discussions. We believe these efforts were worthwhile and produced an excellent result.

The problem, Mr. Chairman, addressed by your Committee today is both very real and very current. I should like to call your Committee's attention to the most recent edition of "Covert Action Information Bulletin". Dec. 1979–Jan. 1980. This Bulletin is published by Covert Action Publications, a District of Columbia non-profit organization. Its Board of Advisors is listed on Page 2, and prominent among those mentioned is Mr. Philip Agee. A regular feature of this Bulletin is a section entitled "Naming Names and Sources and Methods". In this particular most recent issue, three pages are devoted to names. The introduction to the names says, in part:

"As a service to our readers, and to progressive people around the world, we will continue to expose high-ranking CIA officials whenever and wherever we find them."

In this particular issue, sixteen names are mentioned. I will not address myself to the accuracy of the identifications because to do so would only give aid and comfort to the enemy. The potential harm to the individual and his family stands the same, whether the identification is correct or not. The impediment to the work of the Government, let alone the potential damage to the individual and his family, screams forth if the identifications are correct.

I would also call your attention, Mr. Chairman, to the latest edition of "Counter Spy" magazine. This masterpiece of journalism ceased publication for a period but now has resumed. In its current issue, under the title of "U.S. Intelligence" it lists the names of 34 individuals resident in five different foreign countries as

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U.S. intelligence operatives. Everything I said previously about names in the "Covert Action Information Bulletin" applies with equal force to the situation here. In the two issues of these magazines alone you have fifty potential examples of U.S. Government employees who today are bereft of protection from their Government. Swift passage of H.R. 5615 would remedy this egregious wrong.

In conclusion, Mr. Chairman, I would merely state that the membership of the Association of Former Intelligence Officers is grateful to this Committee for its collective sponsorship of legislation so necessary to protect the best interests of this country and to protect the welfare of those who in circumstances that can be both trying and dangerous, labor in the best interests of the Republic. We hope the enlightened leadership shown here by the Congress will also be followed in matters pertaining to the protection of sources and methods, modifications to the Hughes-Ryan Amendment of the Foreign Assistance Act of 1974, and more reasonable treatment of sensitive information under the Amendments to the Freedom of Information Act.

STATEMENT OF JOHN S. WARNER, LEGAL ADVISOR, ASSOCIATION OF FORMER INTELLIGENCE OFFICERS AND FORMER GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Mr. Chairman and Members of the Committee, I wish to thank you for the opportunity to testify today on H.R. 4, the Intelligence Identities Protection Act. Since your Committee first initiated consideration of this type of legislation over two years ago, the Association of Former Intelligence Officers has watched the development of the precise language culminating in the bill reported last year.

AFIO testified on that bill on January 30, 1980, supporting it and demonstrating the need for such legislation to improve the effectiveness of our intelligence effort. That testimony is equally valid today and I shall not repeat it here; it is already in the record, but we do urge that the need is still there. No one who has gained information concerning names of protected identities, or the techniques or knowledge to ascertain such names by virtue of employment with the U.S. Government should be permitted to publish with impunity those names. Those who would so publish with intent to impair or impede the foreign intelligence activities of the United States should also be brought within the prohibition of law.

We support H.R. 4 as written and urge early enactment. While there is legitimate room for discussion about the precise wording, this version was hammered out after most careful consideration. As to Sec. 501(c) there are some who prefer the Senate wording in S. 391. It may well be that if a conference results there could be word changes—but within the framework of the two versions, I am hopeful that this year effective legislation will emerge.

It has been asserted in the past, and doubtless you will hear it again, that this section is "flatly and facially unconstitutional." But this is an assertion only, and not supported by any directly relevant case law. Supporters of this view include those who also assert that the first amendment is an absolute—and we all know it is not. The Supreme Court of the United States has repeatedly held that under narrow and carefully crafted statutes the right to speak or print anything one desires can be limited. Certainly, H.R. 4 has received the most searching review and skillful drafting with the participation of the Executive and the Legislative branches and other interests.

Among some of those who urge the absolutist view of the first amendment were those who asserted in court that Marchetti and Snepp could not be held to their secrecy agreements—that the higher law was the first amendment. The Supreme Court clearly and firmly stated that the U.S. Government can take steps to protect its intelligence secrets, specifically stating that the first amendment privilege did not prevail in all circumstances. Those who lost their first amendment argument at the bar of the Supreme Court are now trying to win that argument in these Committee rooms. Well articulated assertions of unconstitutionality cannot substitute for legal reasoning as pronounced by our highest Court.

We hear too often about the "chilling effect" of this legislation. In our view that is the purpose of H.R. 4—to chill those who would put lives in jeopardy by identifying covert agents either by violating their trust or with the intent to impair or impede the foreign intelligence activities of the United States. I fervently hope their efforts are chilled.

We have spoken before of the tremendous investment in dollars and time it takes to develop cover for intelligence officers. This Committee has authorized this effort and the Congress has provided the funds to accomplish this. Dedicated men and women and their families are carrying out this mandate. Imagine their feelings when in a possibly hostile or semi-hostile environment they are identified, including car license numbers, street addresses, telephone numbers, and directions on how to locate the front door of their apartment. The U.S. Government has an obligation to protect its investment and the safety of these people and their families.

Another fall-out one might note is the fact that many of the people listed in these unauthorized disclosures of names of alleged CIA personnel, are actually not CIA personnel and never have been. Yet this untrue designation will follow them from post to post throughout their careers.

We should be able to say to covert informants or agents more than "just trust us" to keep your name a secret. We should be able to say in addition—you are protected by a law which will send someone to jail who violates this trust.

It is a misreading of the Constitution to say that the Government is powerless to preserve the laboriously constructed network of intelligence officers and agents and also powerless to provide a degree of protection for the physical safety of the persons concerned.

In last year's hearings you heard testimony that activities prohibited by this legislation are already covered by the old espionage statutes, 18USC 793 and 794. Clearly this is not true—as evidenced by the fact that there have been no indictments or prosecutions under these statues (18USC 793 and 794) of past egregious cases. That's why we have H.R. 4. Either the statute covers the action and you prosecute or you don't prosecute because the acts are not covered by the statue.

The so-called espionage laws require action with an intent—either to harm the U.S. or to provide an advantage to a foreign country. In other words, an otherwise lawful act is prohibited if couple with an evil intent. Those laws were challenged as unconstitutional and in the *Gorin* case the Supreme Court firmly rejected such assertion. The *Heine* case was tried under these laws and was cited last year by a witness who termed H.R. 5615 unconstitutional. Why it was cited, I don't understand because the Court simply held that Congress had not intended to cover the specific acts, i.e. collecting unclassified information. The Court did not disturb the ruling in the *Gorin* case that the laws were constitutional.

Assertions that H.R. 4 would prevent legitimate news stories citing the Gary Powers case and the Alan Pope case don't stand up under a reasonable reading of the careful wording of the bill. With any criminal statute one can construct a theoretical or hypothetical set of facts which appear not to meet the intended purpose of the law. Language is an art not a science. But in this bill there has been a skillful choice of words to accomplish limited purposes.

It is recognized by all that H.R. 4 does not purport to solve all disclosure problems. A specific problem has arisen and this bill addresses only that problem and does so very well. Those who urge that this should be a part of an overall revision of the espionage laws or should be a part of charter legislation are in effect saying let's do nothing about this problem. We urge action on this matter now and then move on to the next bill.

The time is overdue when the U.S. Government should act to protect a vital part of its national security machinery and provide some protection to our men and women devoting their lives to the defense of our nation. Enactment will also provide a powerful signal to those dedicated men and women that the Congress, on behalf of the American people, is making an effort to support them.

Mr. WARNER. We support H.R. 4 as introduced, having in mind that the committee reported the language in H.R. 5615. Reasonable men can disagree on precise wording. We, for example, would prefer that the penalties of 501 (a) and (b) be the same. We feel that the degree of duty is the same. The committees found otherwise. As I say, reasonable men can disagree.

We concur on the stiffer fine and prison term for 501(c) as the committee reported over the original H.R. 5615. We would prefer coverage of confidential informants of the United States, in the United States, also coverage of persons preparing to go overseas. We note the com-